

IN THE DISTRICT COURT OF CLEVELAND COUNTY

STATE OF OKLAHOMA

THE STATE OF OKLAHOMA, et al,

Plaintiffs,

vs.

R.J. REYNOLDS TOBACCO COMPANY,
et al,

Defendants.

No. CJ-96-1499 (H)

CONFIDENTIAL.
SUBJECT TO PROTECTIVE
ORDER

* * * * *

VIDEO DEPOSITION OF MANDELL MATHESON

TAKEN ON BEHALF OF THE DEFENDANTS

ON OCTOBER 6, 1998

IN TULSA, OKLAHOMA

* * * * *

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APPEARANCES:

MR. DAVID RIGGS, Attorney at Law, of the firm
Riggs, Abney, Neal, Turpen, Orbison & Lewis, 502 West 6th
Street, Tulsa, Oklahoma 74119, appearing on behalf of the
PLAINTIFFS.

MR. CHARLES J. MIKHAIL, Attorney at Law, of the
firm Scruggs, Millette, Bozeman & Dent, P.A., 734 Delmas
Avenue, Post Office Drawer 1425, Pascagoula, Mississippi
39568-1425, appearing on behalf of the PLAINTIFFS.

REPORTED BY: DEANN BROWN, CSR, RPR, CRR

1	APPEARANCES CONTINUED:	Page 2
2	MR. JERRY HUDSON EVANS, Attorney at Law, of the	
3	firm Mess, Motley, Loadholt, Richardson & Poole, 151	
4	Meeting Street, Suite 600, P.O. Box 1137, Charleston, South	
5	Carolina 29402, appearing on behalf of the PLAINTIFFS.	
6	MR. J. PATRICK CREMIN, Attorney at Law, of the	
7	firm Hall, Estill, Hardwick, Cahle, Golden & Nelson, P.C.,	
8	320 South Boston Avenue, Suite 400, Tulsa, Oklahoma	
9	74103-3708, appearing on behalf of the WITNESS - MANDELL	
10	MATHESON.	
11	MR. KELLY STEWART, Attorney at Law, of the firm	
12	Jones, Day Reavis & Pogue, 2001 Ross Avenue, Suite 2300,	
13	Dallas, Texas 75201, appearing on behalf of the DEFENDANT -	
14	R.J. REYNOLDS TOBACCO COMPANY.	
15	MR. SCOTT W. MACLAREN, Attorney at Law, of the	
16	firm Gwin & Roby, 1201 Elm Street, 4100 Renaissance Tower,	
17	Dallas, Texas 75270, appearing on behalf of the	
18	DEFENDANT - THE TOBACCO INSTITUTE	
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1 MS. POTTER: Today's date is October 6, 1998.

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1 STIPULATIONS

2 It is hereby stipulated and agreed by and between

3 the parties hereto, through their respective attorneys,

4 that the deposition of Mandell Matheson be taken on behalf

5 of the Defendants on this 6th day of October, 1998, in

6 Tulsa, Tulsa County, Oklahoma, by DeAnn Brown, Certified

7 Shorthand Reporter within and for the State of Oklahoma,

8 pursuant to subpoena and notice.

9 It is further stipulated and agreed by and between

10 the parties hereto, through their respective attorneys,

11 that all objections except as to the form of the question

12 and the responsiveness of the answer, are reserved until

13 the time of the trial, at which time they may be made with

14 the same force and effect as if made at the time of the

15 taking of this deposition.

16 * * * * *

00:20:13 2 This is the deposition of Mandell Matheson starting at

00:20:16 3 00:20:17. For the record, the court reporter is DeAnn

00:20:21 4 Brown with Professional Reporters of Oklahoma City. The

00:20:24 5 videographer is Robin Potter with Proof Positive,

00:20:26 6 Incorporated of Oklahoma City. Counsel will now introduce

00:20:30 7 themselves.

00:20:31 8 MR. MIKHAIL: Counsel for the plaintiffs, Charles

00:20:33 9 Mikhail from Pascagoula, Mississippi.

00:20:35 10 MR. EVANS: Jerry Evans for the plaintiffs.

00:20:37 11 MR. RIGGS: David Riggs for the plaintiffs.

00:20:40 12 MR. MACLAREN: Scott MacLaren for the Tobacco

00:20:42 13 Institute.

00:20:46 14 MR. STEWART: Kelly Stewart for R.J. Reynolds

00:20:46 15 Tobacco Company.

00:20:46 16 MR. CREMIN: Pat Cremin for Mandell Matheson.

00:21:00 17 MR. STEWART: Charles, before you begin,

00:21:02 18 Mr. Matheson is being presented without waiver to the

00:21:05 19 defendant's objections to his testimony, including the

00:21:12 20 Knorr Pennington Doctrine and the First Amendment

00:21:17 21 objections. And I was wondering if we could have an

00:21:19 22 agreement that an objection by Mr. Cremin or by me,

00:21:23 23 objection by Mr. Cremin would be an objection on behalf of

00:21:26 24 all defendants and vice versa so I don't have to say, "me,

00:21:29 25 too".

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1 MR. MIKHAIL: I have no problem with that. An
2 objection is going to be dealt with by the court no matter
3 who it's from, so that's fine.
4 MR. MacLAREN: Could I be included in that "me,
5 too"?
6 MR. MIKHAIL: You may.
7 MR. CREMIN: You're going to be part of the "me,
8 too" club.
9 MR. MacLAREN: I meant on behalf of all the
10 defendants so when they asked later why I didn't say
11 anything, I can say, "Well, I would have made all those
12 objections."
13 MR. CREMIN: All those brilliant objections.
14 THE WITNESS: I don't guess I get to do anything,
15 right?
16 MR. MIKHAIL: Just so that I understand and
17 there's no confusion, I understand the basis of your
18 objection but to a certain degree the Court has overruled
19 some of those objections in its ruling on the Motion to
20 Compel discovery of lobbying activities, but to the extent
21 it has not, then is that what I understand your objection
22 is?
23 MR. STEWART: Mr. Matheson is going to be giving
24 you answers to your questions today, I just want to
25 preserve the record. The other depositions of Mr. Nance

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1 and Mr. Rogers were given with the same objection, just to
2 protect the record in case the Court would ever say that
3 discovery was improper. I just don't want a waiver on
4 anything, so I just want it clear on the record.
5 MR. MIKHAIL: That's fine.
6 WHEREUPON,
7 MANDELL MATHESON,
8 after having been first duly sworn, deposes and says in
9 reply to the questions propounded as follows, to-wit:
10 DIRECT EXAMINATION
11 BY MR. MIKHAIL:
12 Q Mr. Matheson, would you state your full name,
13 please?
14 A Mandell Matheson.
15 Q What do you do for a living, Mr. Matheson?
16 A I'm nominally, I guess, president of a company
17 called Matheson Associates, Incorporated. We're a lobbying
18 firm with a minor in public relations, I suppose, but 95
19 percent of our work is in lobbying.
20 Q Okay. Matheson & Associates, is that an
21 incorporated entity?
22 A It's a Subchapter S corporation.
23 Q Okay. And who are the principals in that group?
24 A Me, my wife.
25 Q Karen?

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00:23:05 1 A Yes.
00:23:05 2 Q All right. I saw her name on some of the
00:23:07 3 documents.
00:23:07 4 A I was going to say, wow, you're quick.
00:23:10 5 Q No, you turned over some documents to us, so I
00:23:12 6 recognized the name.
00:23:13 7 A Yes.
00:23:13 8 Q What type of education do you have, Mr. Matheson?
00:23:18 9 A I graduated from high school in Oklahoma City a
00:23:22 10 number of years ago. After I spent a little time in the
00:23:26 11 United States Marines, I went back to school at the
00:23:30 12 University of Oklahoma as, I think, a 25-year-old freshman
00:23:38 13 and was in and out for a period of several years at OU. I
00:23:43 14 did -- I did some classes when I moved to Tulsa at Tulsa
00:23:47 15 University and at Tulsa Community College. I guess the
00:23:51 16 only way I can describe it is I probably have the
00:23:53 17 equivalent of about two years of university education
00:23:58 18 beyond high school.
00:23:58 19 Q Okay. Did you major in anything in undergraduate?
00:24:03 20 A Well, the general major that I went for was in --
00:24:08 21 was in journalism.
00:24:09 22 Q Journalism?
00:24:10 23 A Yeah.
00:24:11 24 Q You did not get a bachelor's degree?
00:24:15 25 A No. No, sir.

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00:24:16 1 Q Okay. What type of employment have you had?
00:24:20 2 Just give me just a brief background since the two years in
00:24:24 3 college. What type of work have you been involved in over
00:24:27 4 the years?
00:24:28 5 A I was working during that period of time and I
00:24:33 6 guess I've had kind of a varied career. I've done
00:24:37 7 everything from being a member of the Oklahoma Highway
00:24:38 8 Patrol to owning a restaurant, but my primary background
00:24:43 9 and work is in newspaper. I spent about 13 or 14 years in
00:24:48 10 newspaper, including some radio and television in Oklahoma
00:24:52 11 City and Indianapolis, Indiana.
00:24:55 12 I began in about sometime in the '70s doing some
00:25:04 13 freelance writing, advertising, copywriting, primarily in
00:25:09 14 some political campaigns and for a group in Ft. Smith,
00:25:13 15 Arkansas, where I would go over and work, you know, several
00:25:16 16 weeks at a time.
00:25:20 17 In 1980, I started the firm that I work with
00:25:23 18 currently, and primarily for about three or four years did
00:25:31 19 media consulting for political candidates in everything
00:25:35 20 from statewide races to the local judges' races and things
00:25:39 21 of that nature. About 1983 and into '84, I started doing
00:25:45 22 some lobbying. And since -- for the last 14 years it's
00:25:50 23 been pretty much just lobbying.
00:25:54 24 Q You said media consulting for political
00:25:56 25 campaigns. Just tell me quickly, what does that involve,

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00:25:39 1 what did you do?

00:26:00 2 A Essentially -- and the term media consultant is

00:26:05 3 used, but it's a pretty broad term. I'll take the example

00:26:11 4 of a gentleman who was Attorney General of Oklahoma, Mike

00:26:14 5 Turpin, who had been a district attorney in Muskogee County

00:26:19 6 and he ran for Attorney General. He hired me, and in that

00:26:22 7 process, I would work with him on everything from speeches

00:26:28 8 to his personal presentation. I would write, produce

00:26:36 9 radio, television, newspaper advertising, brochures, any

00:26:42 10 printed materials that the campaign would use. And I would

00:26:47 11 also buy the media, make the media buys for television,

00:26:51 12 radio, newspaper, and then be just generally a consultant

00:26:56 13 to him on how he should present himself, although he didn't

00:27:00 14 need a lot of guidance in that area because he had been in

00:27:03 15 the public arena, so --

00:27:05 16 Q Okay. And you said in about '83 or '84 that you

00:27:10 17 started pretty much concentrating your efforts on lobbying

00:27:13 18 activities; is that correct?

00:27:14 19 A Well, I -- it was kind of mixed in between. I

00:27:17 20 mean, I was still doing some campaigns, but some people

00:27:21 21 came along, wanted me to do some lobbying things, and so I

00:27:25 22 started -- I was doing a little of both for a while until

00:27:28 23 about 19 -- between '84 and '86, I kind of phased out the

00:27:32 24 political races and concentrated on lobbying.

00:27:37 25 Q Okay. You are, as I understand, a contract

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00:27:41 1 lobbyist for --

00:27:41 2 A Yes.

00:27:42 3 Q -- R.J. Reynolds, correct?

00:27:46 4 A Yes, sir.

00:27:46 5 Q Have you ever given a deposition before?

00:27:48 6 A Yes, sir.

00:27:48 7 Q Okay. You haven't fallen into that trap yet, but

00:27:53 8 I don't want the two of us to be talking on top of each

00:27:55 9 other, so make sure to wait until I finish the question so

00:27:58 10 that the court reporter can get the answer.

00:28:01 11 A Yes, sir.

00:28:01 12 Q When did you start working as a contract lobbyist

00:28:03 13 for R.J. Reynolds?

00:28:06 14 A The fall of 1987.

00:28:14 15 Q Okay. And under what circumstances did you

00:28:18 16 become a lobbyist for R.J. Reynolds? How did that come

00:28:21 17 about, if you can just tell me?

00:28:24 18 A In how I got there, I don't know. I received a

00:28:28 19 call from somebody at R.J. Reynolds in Winston-Salem, and I

00:28:33 20 don't recall right now who it was. And in the beginning,

00:28:38 21 for the first four or five months, I was not actually

00:28:41 22 lobbying, I was working as a, I guess an hourly consultant

00:28:47 23 on an issue of a new product that they had and worked on

00:28:54 24 that from whenever it was, September or so, until the first

00:28:58 25 of the year.

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00:28:58 1 Q Was that Premier?

00:29:00 2 A Yes.

00:29:01 3 Q Okay. The person who contacted you, did that

00:29:06 4 person ask you on behalf of R.J. Reynolds to begin doing

00:29:10 5 lobbying activity of the Oklahoma legislature on various

00:29:14 6 pieces of legislation and issues that interest R.J.

00:29:17 7 Reynolds?

00:29:17 8 A Not until after I had finished -- we got through

00:29:22 9 that fall and the legislature at that time would go into

00:29:25 10 session in January, and then in the end of December, the

00:29:29 11 first of January, somewhere along there, of about '88, they

00:29:34 12 asked me to become their lobbyist in Oklahoma.

00:29:36 13 Q Okay. Did this person or anyone else from R.J.

00:29:39 14 Reynolds tell you why they selected you to be their

00:29:42 15 lobbyist?

00:29:44 16 A Not really.

00:29:45 17 Q Did you ask or inquire as to why you were

00:29:48 18 selected to be the lobbyist for R.J. Reynolds?

00:29:52 19 A All I know is they interviewed some people, I

00:29:57 20 don't even know who the other people that were

00:29:59 21 interviewed. I know they got a recommendation from

00:30:03 22 somebody, but I'm not sure.

00:30:05 23 Q None of your friends or associates or relatives

00:30:07 24 or anyone tell you that they made a recommendation?

00:30:10 25 A Nobody has taken credit for it yet.

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00:30:12 1 Q Okay. What lobbying activity did you do prior to

00:30:17 2 R.J. Reynolds contacting you?

00:30:20 3 A I had a variety of clients, and I'll have to kind

00:30:24 4 of recall who I was working for about that time, but I --

00:30:27 5 Q Let me ask you this, are your clients -- is that

00:30:32 6 something that's disclosed publicly in Oklahoma?

00:30:34 7 A Yes, sir.

00:30:35 8 Q Okay. Because I don't want you to reveal any

00:30:37 9 confidential matters.

00:30:38 10 A No, sir.

00:30:39 11 Q Okay. Go ahead.

00:30:40 12 A At the time, I recall I was representing a group

00:30:43 13 called the Rural Telephone Association, and still do

00:30:48 14 represent them. That was a coalition of about 25 small,

00:30:53 15 independent telephone companies. I was working for a group

00:30:57 16 called Environmental Solutions, Incorporated who were

00:31:04 17 working on waste disposal. I believe at the time I was

00:31:10 18 doing what's known as monitoring work for Waste Management,

00:31:14 19 Incorporated. I think I was doing some monitoring that

00:31:20 20 year for the Quik Trip Corporation, which is a chain of

00:31:24 21 convenience stores.

00:31:26 22 Q Okay.

00:31:26 23 A And there may have been some others, but I can't

00:31:29 24 remember.

00:31:29 25 Q Those are the ones that come to mind?

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1 A Yes, sir.
 2 Q Okay. We say lobbying. What is it that you do
 3 in your lobbying activities?
 4 A Lobbying, generally, is -- you know, if you're
 5 doing it full-time on what's called a proactive basis, is
 6 to work with members of the Oklahoma legislature, sometimes
 7 the staff, to either pass, defeat, amend, or work on in
 8 some other method some legislation that's pending that may
 9 affect the client.
 10 Q Okay. Is it fair to say that you attempt to have
 11 the legislation that is in favor of your client or that
 12 your client favors passed and have legislation that is, in
 13 your client's opinion, adverse to the client defeated?
 14 A Yes, sir.
 15 MR. CREMIN: Object to the form of the question,
 16 compound, and I don't like "is it fair to say" because I
 17 don't know what that means.
 18 MR. MIKHAIL: Well, I'll break it down in two.
 19 Q (BY MR. MIKHAIL) Is it fair to say,
 20 Mr. Matheson, that one of the things that you do as a
 21 lobbyist is attempt to have legislation passed that your
 22 client favors?
 23 A Yes, sir.
 24 MR. CREMIN: Same objection to "is it fair".
 25 MR. MIKHAIL: I understand.

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1 Q (BY MR. MIKHAIL) Is it fair to say that one of
 2 the things you do as a lobbyist is to have legislation that
 3 is, in your client's opinion, adverse to your client
 4 defeated?
 5 MR. CREMIN: Same objection. Go ahead and
 6 answer.
 7 A Yes, sir.
 8 Q (BY MR. MIKHAIL) Okay. Other than legislation,
 9 what else does a lobbyist work on that is going on in the
 10 capitol? And let me give you an example what I'm talking
 11 about. Other than actual bills that are introduced, are
 12 there resolutions, are there other matters that a lobbyist
 13 works on other than pieces of legislation? Do you
 14 understand my question?
 15 A Yes, sir.
 16 Q Okay.
 17 A Some do, some don't work on state rules and
 18 regulations of agencies. It's a matter of how they set up
 19 their relationship with the client. You mentioned
 20 resolutions; that's part and parcel of the legislative
 21 process, so that would fall under the same general
 22 category.
 23 Q Okay. How does a resolution -- what is the
 24 process for resolutions to take place in the legislature as
 25 opposed to a bill?

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00:34:05 1 A They're introduced in essentially the same manner
 00:34:07 2 of a legislator decides to introduce, but the one
 00:34:12 3 difference is that under Oklahoma law, a joint resolution,
 00:34:17 4 which is something that's passed by both houses of the
 00:34:20 5 legislature, has the force and effect of law and can be
 00:34:25 6 vetoed or approved by the governor, just as any other
 00:34:30 7 regular bill. There are concurrent resolutions passed,
 00:34:35 8 which concurrent means it's passed by both the House and
 00:34:40 9 the Senate, that generally is expected to reflect the
 00:34:46 10 concerns or opinion of the legislature but does not have
 00:34:49 11 the force and effect of law.
 00:34:51 12 A simple resolution is one that's passed in
 00:34:53 13 either House. I say simple; Senate resolution, simple
 00:34:58 14 House resolution that may -- it may be to honor the best
 00:35:04 15 football team or the strawberry queen or it may express
 00:35:08 16 some thoughts of the legislature.
 00:35:11 17 Q Okay.
 00:35:11 18 MR. RIGGS: Or honor coon dogs some days.
 00:35:15 19 THE WITNESS: Yeah, coon dogs; done that.
 00:35:15 20 MR. MIKHAIL: That was David Riggs saying that,
 00:35:17 21 that wasn't me.
 00:35:18 22 MR. CREMIN: The coon dog was a prior strawberry
 00:35:22 23 queen is the amazing part of it.
 00:35:24 24 Q (BY MR. MIKHAIL) Mr. Matheson, I forgot to tell
 00:35:27 25 you earlier, you said that you were on some medication for

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00:35:30 1 antihistimine. If you need a break at any time, if you're
 00:35:33 2 not feeling well or if you're --
 00:35:34 3 A No, I feel fine.
 00:35:35 4 Q Okay. But if you do, just let me know and --
 00:35:38 5 we'll take breaks often, but I just want you to know to
 00:35:41 6 feel free to ask me --
 00:35:42 7 A Thank you.
 00:35:43 8 Q -- when you're ready, when you feel
 00:35:44 9 uncomfortable.
 00:35:45 10 In all the years that you have worked as a
 00:35:46 11 lobbyist for R.J. Reynolds, was most of the work you did on
 00:35:50 12 legislation or did it involve any resolutions in the
 00:35:53 13 Oklahoma legislature?
 00:35:54 14 The reason I ask that, let me preface my
 00:35:56 15 question. In looking at the documents that were produced,
 00:35:58 16 both by the defendants in this case, by R.J. Reynolds, and
 00:36:01 17 by you, I didn't really see anything dealing with any
 00:36:07 18 particular resolutions.
 00:36:09 19 MR. CREMIN: Counsel, just a point of
 00:36:10 20 clarification. Do you want to know if he worked on any
 00:36:12 21 resolution in his life or any resolution affecting RJR?
 00:36:17 22 MR. MIKHAIL: RJR.
 00:36:20 23 MR. CREMIN: Okay.
 00:36:20 24 A I'm trying to recall and it's difficult. There's
 00:36:29 25 some resolutions that have passed and, you know, in the

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00:36:33 1 last few years, simple resolutions expressing some thoughts
00:36:39 2 that because they didn't have the force and effect of law,
00:36:41 3 we didn't really concern ourselves with.
00:36:43 4 Q (BY MR. MIKHAIL) Okay. Does anything dealing
00:36:45 5 with tobacco that RJR was interested in, whether they were
00:36:48 6 for or against, by way of a resolution come to mind right
00:36:52 7 now?
00:36:54 8 A One that I can think of was a resolution that was
00:36:59 9 passed six, seven years ago that was not, to my knowledge,
00:37:06 10 initiated by anybody in the tobacco industry, but by two
00:37:11 11 members of the legislature who were smokers requiring that
00:37:15 12 there be some indoor location in state buildings where
00:37:23 13 smokers could smoke. That actually zipped through before
00:37:31 14 we really realized it had happened.
00:37:33 15 Q So it was after the fact that you learned of it?
00:37:35 16 A Well, pretty much, yes, sir.
00:37:37 17 Q Okay. But it does not have or did not have the
00:37:40 18 force of law?
00:37:40 19 A Yes, it did, because it was a joint resolution.
00:37:43 20 Q Okay. Have you, on behalf of R.J. Reynolds, made
00:37:46 21 any efforts to change the joint resolution?
00:37:52 22 A No, sir.
00:37:53 23 Q Okay. Has anyone else attempted to change that
00:37:59 24 joint resolution since it passed?
00:38:00 25 MR. CREMIN: That he knows about?

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00:38:01 1 Q (BY MR. MIKHAIL) That you know about, sure.
00:38:04 2 A No, sir.
00:38:04 3 Q Okay. Do you remember what year that was?
00:38:07 4 A I can just guess that it was probably '89, '90,
00:38:14 5 somewhere in there. I'm not really sure.
00:38:16 6 Q Have you lobbied for R.J. Reynolds continuously
00:38:19 7 since 1987, '88?
00:38:21 8 A Yes, sir.
00:38:21 9 Q Okay. Are you a full-time lobbyist for -- well,
00:38:24 10 full-time lobbyist?
00:38:26 11 A I'm known as a contract lobbyist. I consider
00:38:32 12 full-time because I'm on call for them year-round. My
00:38:37 13 primary work is done during the legislative session.
00:38:40 14 Q Okay. But question was not necessarily full-time
00:38:43 15 for R.J. Reynolds, but are you a full-time lobbyist as a
00:38:45 16 trade or profession?
00:38:46 17 A Yes, sir.
00:38:47 18 Q Okay. And you have worked as a lobbyist for R.J.
00:38:49 19 Reynolds every legislative session since 1987, fall of '87,
00:38:54 20 early '88?
00:38:54 21 A Yes, sir. I did not work in the session in '87
00:38:57 22 because the session was over, so I began actual lobbying
00:39:01 23 work in 1988.
00:39:02 24 Q Okay. How does that work? My understanding is
00:39:05 25 that you have two year sessions; is that correct?

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00:39:08 1 A Yes. Just like Congress, the session of the
00:39:12 2 legislature that just concluded in 1998 was the second
00:39:16 3 session of the 46th Oklahoma Legislature. When they go
00:39:19 4 into session in 1999, that will be the first session of the
00:39:24 5 47th legislature, and then that will carry over through the
00:39:29 6 year 2000 which will be the second session of the 47th
00:39:33 7 legislature. Legislation that's still alive, for instance,
00:39:36 8 in 1999 will carry, if it hasn't passed, will carry over
00:39:41 9 and be alive in the year 2000.
00:39:44 10 Q How long is the session? It's not 12 months, is
00:39:46 11 it?
00:39:46 12 A No. Nominally, by constitution, they go into
00:39:51 13 session on the first Monday in February and must adjourn by
00:39:57 14 5 p.m. the last Friday in May.
00:39:59 15 Q Okay. And that's -- and then it carries over the
00:40:04 16 same time period in the following calendar year?
00:40:06 17 A That's every year because that's set by the
00:40:10 18 constitution in a vote about six or seven years ago, they
00:40:13 19 changed that. You used to go in in January and had, quote,
00:40:17 20 90 legislative days which usually ended sometime in June.
00:40:21 21 There are, however, in the intervening period of time from
00:40:25 22 the adjourning in May until they come back in in February,
00:40:29 23 there are interim committees, studies and meetings, and
00:40:33 24 things of that nature.
00:40:34 25 Q Okay. Since you became a lobbyist for R.J.

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00:40:38 1 Reynolds, have you been a contract lobbyist for any other
00:40:42 2 tobacco manufacturer?
00:40:43 3 A No, sir.
00:40:43 4 Q Have you been a contract lobbyist for the Tobacco
00:40:48 5 Institute?
00:40:50 6 A Yes.
00:40:51 7 Q Do you remember what years?
00:40:53 8 A Yes, sir. Fall of 1986 and up through the final
00:41:01 9 part of the legislative session in '87.
00:41:06 10 Q So that was before you became a lobbyist for RJR?
00:41:10 11 A Yes, sir.
00:41:11 12 Q Okay. Do you know if the Tobacco Institute
00:41:14 13 recommended you to RJR?
00:41:16 14 A I do not know that, sir.
00:41:17 15 Q Okay. How did you become a lobbyist for the
00:41:20 16 Tobacco Institute?
00:41:21 17 A The lobbyist for the Tobacco Institute then and
00:41:25 18 now, Ken Nance, talked to me in the fall of 1986 about
00:41:33 19 doing some work on a pending local resolution in this
00:41:41 20 area. And at that point, I talked to a gentleman in
00:41:47 21 Denver, I think Stan Boman, and we came to some agreement
00:41:52 22 and I started doing the work on the local, and then that
00:41:57 23 worked into something else.
00:41:58 24 Q Okay. Am I understanding you correctly that Ken
00:42:02 25 Nance, at the time that he approached you, was a lobbyist

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1 for the Tobacco Institute?

2 A Yes, sir.

3 Q Okay. And he approached you about the prospect
4 of you also becoming a lobbyist for the Tobacco Institute
5 on some local issues?

6 A If I could explain a point there. Under the
7 lobbying act in Oklahoma, something you do at the local
8 level does not fall under the lobbying act. So I don't
9 know what you would -- how you would characterize what I
10 did during that period of the fall that I did here locally
11 in Tulsa. I was doing work for the Tobacco Institute, but
12 under the strict definition, it wasn't lobbying.

13 Q Okay. Were you attempting to work either for or
14 in favor of certain proposed ordinances for cities and
15 towns?

16 A Yes, sir.

17 Q Okay. What particular ordinance was Ken Nance
18 interested in you working on?

19 A More the Tobacco Institute than Ken himself.

20 Q Okay. I understand.

21 A But the -- at that time, the City of Tulsa
22 City/County Health Department, which is made up of really,
23 basically, the Tulsa County area only, was considering the
24 idea of a -- and I'm trying to recall exactly how it was
25 done, but to prohibit smoking in certain public areas. And

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1 I think it would include public buildings and some private
2 businesses such as restaurants or bowling alleys, things of
3 that nature.

4 Q Was that the Smoking in Public Places Act?

5 A The Smoking in Public Places Act is a state
6 statute that was passed in 1987.

7 Q Okay. Was this a similar version but on an
8 ordinance level?

9 A Yes, it would have -- but as it turns out, the
10 City/County Health Department figured out they can't pass
11 ordinances. They can pass a resolution but it would have
12 no force and effect of law, and so they made a
13 recommendation to the city commissioners at that time.

14 Q Okay. And what work did you do as it related to
15 that ordinance?

16 A I attended some of the City/County Health
17 Department meetings. They had two or three meetings on
18 that. I didn't actually participate in the meetings, I
19 just watched what happened. I encouraged some business
20 owners to be there to state their feelings about the
21 ordinance or the thought of an ordinance or the proposal.
22 When it went to the level of being sent to -- at that time
23 we had the commission form of government. We now have a
24 council, mayor form of government. We had a commission
25 form of government at that time with a mayor and, I

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00:44:59 1 believe, five commissioners. And so I then began working,
00:45:06 2 talking to either the staff members for the commissioners
00:45:10 3 or the commissioners themselves regarding a proposed
00:45:13 4 ordinance.

00:45:14 5 Q I take it that the businessmen that you suggested
00:45:19 6 or asked be in attendance shared your client, the Tobacco
00:45:22 7 Institute's, view as it related to the ordinance?

00:45:25 8 A Well, I don't know that specifically. I
00:45:31 9 contacted people in the restaurant business, bowling alleys
00:45:33 10 and things like that and urged them to attend but without
00:45:38 11 ever having any specific conversations with any of them.

00:45:40 12 Q What specifically did the Tobacco Institute ask
00:45:44 13 you to attempt to do as it related to the ordinance?

00:45:49 14 A I don't know that there was a specific statement,
00:45:55 15 but the general -- I guess the general idea was to try to
00:46:03 16 stop something like that from passing.

00:46:05 17 Q Okay. So they were against it?

00:46:08 18 A Yes, sir.

00:46:07 19 Q And they wanted you to exert some effort to make
00:46:11 20 sure it's defeated, correct?

00:46:12 21 A Yes, sir.

00:46:13 22 Q And what was the reason that the Tobacco
00:46:14 23 Institute wanted this resolution or ordinance defeated?

00:46:24 24 A I think that generally as a trade organization
00:46:31 25 that it was their feeling that they did not want --

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00:46:35 1 particularly private businesses, the general approach has
00:46:43 2 been that government can kind of do what government wants
00:46:51 3 to, but that in private businesses; restaurants, bowling
00:46:54 4 alleys, this building, this office are private businesses
00:47:01 5 and they can do as they choose and that they did not want
00:47:05 6 an entity of government telling private enterprises what to
00:47:09 7 do.

00:47:10 8 Q Are you saying that the Tobacco Institute's
00:47:12 9 concern was the freedom of private businesses to make the
00:47:15 10 choice?

00:47:18 11 A I'm saying that -- I can't really tell you what
00:47:26 12 they were thinking at that time, but that was how it was
00:47:34 13 laid out for me, in effect.

00:47:35 14 Q That was the argument that you were to present
00:47:39 15 against the ordinance, correct?

00:47:41 16 MR. CREMIN: Object to the form of the question.
00:47:43 17 Answer it, if you can.

00:47:44 18 A Yes, sir.

00:47:45 19 Q (BY MR. MIKHAIL) Okay. Did you discuss or did
00:47:50 20 anyone from the Tobacco Institute, including Stan Boman,
00:47:54 21 discuss with you any health issues relative to this
00:47:59 22 ordinance?

00:48:00 23 A No, sir.

00:48:04 24 Q You said that this was how it was presented to
00:48:07 25 you, that private businesses ought to make the choice as

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00:48:11 1 opposed to it being imposed on them by government?
00:48:15 2 A Yes, sir.
00:48:18 3 Q Do you know, Mr. Matheson, why the issue of
00:48:22 4 health was not discussed as it related to this ordinance?
00:48:27 5 A No, sir.
00:48:28 6 Q Did you bring it up to the Tobacco Institute
00:48:31 7 representatives?
00:48:31 8 A No, sir.
00:48:32 9 Q The effect the ordinance would have on public
00:48:35 10 health?
00:48:36 11 A No, sir.
00:48:36 12 Q Did they bring it up? When I say "they", I mean
00:48:39 13 the Tobacco Institute or anyone representing them.
00:48:41 14 A And I guess I have to tell you at this point, the
00:48:43 15 Tobacco Institute to me was Stan Boman. He was the only
00:48:47 16 person I knew, the only person I dealt with. And I,
00:48:49 17 frankly, had no idea how big it was and really what it did.
00:48:54 18 But, no, we never discussed those issues.
00:48:58 19 Q Stan Boman was at the time, if I'm correct, and
00:49:02 20 you correct me if I'm wrong, the regional director or
00:49:05 21 regional -- I guess director is the best way to put it, of
00:49:12 22 several states which included Oklahoma; isn't that right?
00:49:14 23 A I really don't know. As I said, you know, to me,
00:49:18 24 he was the Tobacco Institute as far as I knew. He's the
00:49:21 25 only person I ever dealt with, had any contact with, other

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00:49:24 1 than Ken Nance, that I ever had any contact with in the
00:49:27 2 Tobacco Institute.
00:49:28 3 Q Okay. Did you actually report to Stan Boman in
00:49:32 4 the sense of giving him updates on what was going on and
00:49:37 5 briefing him on the happenings?
00:49:39 6 A Yes, sir.
00:49:39 7 Q Okay. And did you ever communicate with him in
00:49:41 8 writing?
00:49:42 9 A Yes, sir.
00:49:44 10 Q Did he ever communicate with you in writing?
00:49:49 11 A To a limited extent. I don't recall exactly
00:49:52 12 what, but I'm sure he sent me some materials and things,
00:49:56 13 but I don't recall exactly what it was.
00:49:58 14 Q Did you maintain files and keep records of the
00:50:01 15 written communications that you submitted to Stan Boman?
00:50:04 16 A At the time, yes, sir.
00:50:05 17 Q When you received the notice of deposition
00:50:10 18 subpoena in this case, did those records exist that dealt
00:50:14 19 with Stan Boman?
00:50:15 20 A No, sir, not in my office anyway.
00:50:17 21 Q That's what I meant. Did you have them?
00:50:19 22 A No, sir.
00:50:20 23 Q Do you know what's happened to them?
00:50:22 24 MR. CREMIN: His copies, you mean?
00:50:24 25 MR. MIKHAIL: Yeah.

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00:50:24 1 A I don't have any of ours because our offices are
00:50:27 2 at home and we run out of space and they sort of -- you
00:50:31 3 know, we go on a last in -- whatever system it is, you
00:50:40 4 know, as far as down the line, we ain't got room left in
00:50:42 5 the filing cabinets or the boxes, it goes out.
00:50:45 6 Q (BY MR. MIKHAIL) Okay. The request, the
00:50:47 7 subpoena requested various documents from you. And just so
00:50:51 8 the record will be clear, let me just read that request
00:50:53 9 into the record. "All documents relating to your lobbying
00:50:56 10 activities on behalf or for the benefit of or in any way
00:51:01 11 relating to the tobacco industry or relating to tobacco in
00:51:05 12 the state of Oklahoma between the dates of January 4th,
00:51:09 13 1954 and August 22nd, 1996, with the exception of
00:51:15 14 information about amounts of money you have been paid by
00:51:17 15 your clients, your expense accounts, and any specific
00:51:20 16 expenditures you have made in Oklahoma in connection with
00:51:23 17 lobbying before the legislature or any state agency or
00:51:26 18 regulatory body." Do you recall that request?
00:51:28 19 A Yes, sir.
00:51:29 20 Q Have you produced to us all the documents that
00:51:32 21 will be responsive to this request?
00:51:34 22 A Yes, sir.
00:51:34 23 Q Okay.
00:51:34 24 A I turned them over to Mr. Cremin, that is.
00:51:42 25 Q I understand.

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00:51:43 1 A Okay.
00:51:43 2 Q I understand.
00:51:49 3 MR. CREMIN: How about this is an excellent time
00:51:48 4 for a break?
00:51:48 5 MR. MIKHAIL: That's fine.
00:51:50 6 MS. POTTER: Off the record at 00:51:52.
00:51:55 7 (A recess was had.)
01:18:02 8 MS. POTTER: Back on the record at 01:18:09.
01:18:14 9 Q (BY MR. MIKHAIL) Mr. Matheson, did you need --
01:18:16 10 okay.
01:18:21 11 MR. CREMIN: Multi-talented legal pad.
01:18:25 12 Q (BY MR. MIKHAIL) What other than the work on
01:18:26 13 this city ordinances -- was it in the City of Tulsa?
01:18:29 14 A Yes, sir.
01:18:29 15 Q Okay. Other than that assignment did you do for
01:18:33 16 the Tobacco Institute?
01:18:36 17 A During the 1987 legislative session, they asked
01:18:42 18 me to -- and it was late in the session, I don't recall
01:18:46 19 exactly when, maybe the last couple of months of the
01:18:50 20 session, they asked me to work with Mr. Nance on some
01:18:53 21 pending legislation.
01:18:55 22 Q In the Oklahoma legislature?
01:18:57 23 A Yes, sir.
01:18:57 24 Q And what was that legislation?
01:18:59 25 A That was what became known as the Smoking in

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1 Public Places Act.

2 Q Okay. And what did you do in conjunction with
3 Mr. Nance as it related to that act?4 A We did one of the normal things, of course, which
5 is talking to the legislators about votes, but primarily,
6 we did some work on writing amendments for the legislation.7 Q Okay. Let me back up, maybe make it a little
8 easier. When you were asked to do this work along with
9 Mr. Nance on the Smoking in Public Places Act -- actually,
10 it wasn't an act at the time.

11 A Right.

12 Q Was a bill -- had a bill already been introduced?

13 A Yes, sir.

14 Q Okay. Did you come on board on that project or
15 that assignment after the bill had been introduced?

16 A Yes, sir.

17 Q Okay. And had it been assigned to a committee?

18 A As I recall, I think the bill was -- it already
19 passed the House and had been in the Senate and committee
20 and I think it come out of committee in the Senate with
21 amendments. And through the normal process, that was
22 probably going to go to what's called a conference
23 committee. And so I believe it was close to that stage of
24 being going to a conference committee by the time I got
25 involved.

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1 Q Was this in the spring of '87?

2 A Yes, sir.

3 Q Okay. And what type of amendments were you
4 putting together or promoting to that bill?5 MR. CREMIN: Object to the form of the question.
6 I'm not sure what putting together or promoting means.7 MR. MIKHAIL: He said he worked on having
8 amendments made to the legislation.

9 Q (BY MR. MIKHAIL) Did I misunderstand you?

10 A No, sir.

11 Q Okay. And what type of amendments?

12 A At the time -- and you have to understand that
13 Ken Nance has a background in drafting legislation. He was
14 a -- before he became a legislator and an attorney, he
15 worked in the bill drafting session for the legislature
16 sometime in the '60s. And so he was trying to draft
17 language that was, I guess, acceptable to his client. And
18 I worked with him some on that, more -- in my case, I'm
19 sort of a dot the I's, cross the T's person, and so I would
20 sit with Ken and he would be kind of going through looking
21 at the legislation in the proposed bill or looking at the
22 language in the proposed bill and we would look at methods
23 of making some changes or suggesting changes to the
24 authors.

25 MR. MacLAREN: Object to his answer in so far as

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01:21:59 1 he has testified with regard to Ken Nance's actions as
01:22:02 2 being nonresponsive to the question.01:22:05 3 Q (BY MR. MIKHAIL) Mr. Matheson, I know you don't
01:22:09 4 have the piece of legislation in front of you so it might
01:22:11 5 be difficult, but just from your best recollection that you
01:22:15 6 can tell me, what did that bill provide for, generally?
01:22:23 7 And I say "that bill", the smoking in public -- which
01:22:26 8 became later the Smoking in Public Places Act.01:22:30 9 MR. CREMIN: Counsel, you're talking about what
01:22:32 10 did it ultimately provide for or what did it provide for
01:22:34 11 when he first saw it?01:22:36 12 Q (BY MR. MIKHAIL) When he was assigned to start
01:22:38 13 working to having amendments made to it, et cetera. When
01:22:41 14 you were asked to start working on that project, what did
01:22:43 15 that proposed bill provide for, what was it attempting to
01:22:46 16 do?01:22:47 17 A I honestly do not remember what it really
01:22:50 18 proposed because by the time I, in effect, got my hands on
01:22:54 19 it or got involved in it, it was -- you know, there were
01:22:59 20 various proposals and various ideas going into it. All I
01:23:04 21 know is that it related to some prohibitions of smoking in
01:23:10 22 what are defined as public places. And I mean, I don't --
01:23:16 23 I just do not know exactly what it was because I had not
01:23:21 24 been in on it from the beginning.

01:23:23 25 Q You know what the term use restrictions means,

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01:23:27 1 don't you? Use restrictions?

01:23:31 2 A Use restrictions?

01:23:32 3 Q U-s-e, use. Are you familiar with that term?

01:23:39 4 A No, not really.

01:23:40 5 Q Okay. I'll represent to you that one of the
01:23:42 6 things that Tobacco Institute and other lobbyists have
01:23:44 7 discussed in other litigation is the tobacco industry,
01:23:47 8 including R.J. Reynolds and the Tobacco Institute, working
01:23:49 9 for use restrictions; in other words, legislation similar
01:23:52 10 to the one we're discussing now that puts limits on the use
01:23:56 11 of tobacco.

01:23:57 12 A Oh, okay.

01:23:58 13 Q Okay. Do you believe that the piece of
01:24:02 14 legislation that you're working on dealt with restrictions
01:24:06 15 on the use of tobacco in public places?

01:24:10 16 A Yes, sir.

01:24:10 17 Q Okay. And that is something that the industry
01:24:12 18 and your client has opposed, correct?01:24:17 19 MR. STEWART: Objection. Which client? Are you
01:24:19 20 still talking about this '87 time period?01:24:22 21 Q (BY MR. MIKHAIL) 1987 when you represented the
01:24:26 22 Tobacco Institute, the Tobacco Institute opposed
01:24:29 23 restrictions on the use of tobacco in public places, didn't
01:24:32 24 it?

01:24:32 25 A I think generally, yes. And that's difficult to

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<p>01:24:36 1 just say yes or no. I don't recall. Again, I was fairly</p> <p>01:24:42 2 new with them. I hadn't done work in this area before. I</p> <p>01:24:47 3 know that since I've worked for Reynolds, the general</p> <p>01:24:52 4 position has been that we don't too much interfere with</p> <p>01:24:57 5 what state government does in terms of when it wants to do</p> <p>01:25:00 6 restrictions, but that we oppose placing restrictions on</p> <p>01:25:07 7 private businesses in their use of it and how they can</p> <p>01:25:13 8 operate their own businesses.</p> <p>01:25:14 9 Q So that applied both to the Tobacco Institute and</p> <p>01:25:17 10 R.J. Reynolds?</p> <p>01:25:18 11 A I don't know if -- that's my point, I don't know</p> <p>01:25:19 12 if it applied at that time with the Tobacco Institute. I</p> <p>01:25:25 13 hadn't been told that. Like I say, I was -- I don't want</p> <p>01:25:28 14 to say I was a babe in the woods, but I was -- I just</p> <p>01:25:31 15 didn't know exactly what their policies were.</p> <p>01:25:33 16 Q Okay. Do you know what the Tobacco Institute's</p> <p>01:25:36 17 objections were to the legislation that we're talking</p> <p>01:25:40 18 about, the bill to put restrictions on tobacco use in</p> <p>01:25:43 19 public places?</p> <p>01:25:44 20 MR. CREMIN: Does he know -- does he know now,</p> <p>01:25:48 21 you mean did he know then?</p> <p>01:25:50 22 Q (BY MR. MIKHAIL) Did you know at the time what</p> <p>01:25:51 23 the Tobacco Institute's objections was to those</p> <p>01:25:54 24 restrictions on the use of tobacco in public places?</p> <p>01:25:57 25 A Really, only what I was told by Mr. Nance.</p>	<p>01:27:25 1 Q Okay. Was the issue of health discussed at all?</p> <p>01:27:28 2 A No, sir.</p> <p>01:27:28 3 Q The consequences of tobacco use or restricted</p> <p>01:27:32 4 tobacco use?</p> <p>01:27:33 5 A No, sir.</p> <p>01:27:44 6 Q Are you familiar with Tobacco Institute</p> <p>01:27:48 7 documents --</p> <p>01:27:50 8 A Some.</p> <p>01:27:51 9 Q Well, let me finish my question.</p> <p>01:27:52 10 A I'm sorry. I'm sorry.</p> <p>01:27:54 11 Q Are you familiar with Tobacco Institute documents</p> <p>01:28:00 12 that describe how in attempting to influence legislation</p> <p>01:28:06 13 that the discussion of the issue of health was a loser and</p> <p>01:28:09 14 that the industry, including the Tobacco Institute, needed</p> <p>01:28:12 15 to shift focus and use as its argument issues such as</p> <p>01:28:16 16 freedom, such as tax burdens, such as big brother</p> <p>01:28:20 17 government coming down on us? Are you familiar with any</p> <p>01:28:22 18 documents describing the need to shift away from a health</p> <p>01:28:26 19 argument to a freedom of choice, big brother argument?</p> <p>01:28:29 20 MR. RIGGS: I object to the form.</p> <p>01:28:30 21 Q (BY MR. MIKHAIL) Are you familiar with documents</p> <p>01:28:33 22 to that effect?</p> <p>01:28:33 23 A No, sir, not specifically as you have described</p> <p>01:28:35 24 it.</p> <p>01:28:36 25 Q Okay. Any other work for the Tobacco Institute</p>
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<p>01:25:59 1 Q And what did Mr. Nance tell you?</p> <p>01:26:02 2 A That they didn't want to see legislation that</p> <p>01:26:08 3 would restrict private businesses in the way they allowed</p> <p>01:26:16 4 or didn't allow the use of tobacco on their premises.</p> <p>01:26:19 5 Q Isn't it true, Mr. Matheson, that if there is</p> <p>01:26:22 6 less use or restricted use of tobacco, there would be less</p> <p>01:26:28 7 sales of tobacco products?</p> <p>01:26:32 8 A I have no way of knowing that, really.</p> <p>01:26:34 9 Q Well, do you think that the Tobacco Institute, at</p> <p>01:26:37 10 the time that you represented it, was simply concerned</p> <p>01:26:42 11 about the notion of freedom of choice for businesses or was</p> <p>01:26:45 12 it also concerned about its profits and the restrictions on</p> <p>01:26:52 13 the use of their product?</p> <p>01:26:53 14 MR. CREMIN: I'll object to the form of that</p> <p>01:26:56 15 question.</p> <p>01:26:56 16 Q (BY MR. MIKHAIL) Do you understand it, Mr.</p> <p>01:26:57 17 Matheson?</p> <p>01:26:58 18 A I understand the question.</p> <p>01:26:59 19 Q Could you answer it, please?</p> <p>01:27:00 20 A But I don't have any specific knowledge.</p> <p>01:27:02 21 Q From what was represented to you by Mr. Nance,</p> <p>01:27:10 22 was there any other reason given you about Tobacco</p> <p>01:27:16 23 Institute's objections to that piece of legislation other</p> <p>01:27:20 24 than the issue of choice?</p> <p>01:27:23 25 A No, sir, not that I recall at all.</p>	<p>01:28:41 1 at the time, in the '87 session?</p> <p>01:28:44 2 A No. When the session ended, my employment with</p> <p>01:28:47 3 the Tobacco Institute ended.</p> <p>01:28:48 4 Q Okay. What was the outcome of the work on that</p> <p>01:28:53 5 bill?</p> <p>01:28:53 6 A The bill passed, became law.</p> <p>01:28:59 7 Q Okay. What changes did you and Mr. Nance try to</p> <p>01:29:07 8 have made to the bill?</p> <p>01:29:12 9 A I'm going to have to think a minute to really get</p> <p>01:29:15 10 it down right. I think one of the major changes was to</p> <p>01:29:23 11 make sure that restrictions didn't apply to private</p> <p>01:29:28 12 businesses. There were some specific exemptions for bars,</p> <p>01:29:37 13 clubs, bowling alleys, prisons, jails. At that time we had</p> <p>01:29:45 14 a new racetrack in Oklahoma, a parimutual betting track; it</p> <p>01:29:52 15 didn't apply to them. And I don't know whether that was</p> <p>01:29:55 16 something that we had tried to do or if that industry was</p> <p>01:30:00 17 involved in it in some way, I just don't know, but I know</p> <p>01:30:03 18 that ended up in the bill. There was already current law</p> <p>01:30:11 19 that prohibited smoking in elevators, museums, indoor</p> <p>01:30:20 20 circuses, things of that nature. That had been passed in</p> <p>01:30:26 21 1976, I think.</p> <p>01:30:32 22 So -- we also, I think, worked to keep what we</p> <p>01:30:36 23 consider reasonable fines in it, in which I think the</p> <p>01:30:41 24 maximum was \$100 for a violation of the act. And that that</p> <p>01:30:48 25 would be -- and I don't know whether this was in the</p>

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1 original legislation or not because I didn't -- wasn't
2 involved in it at that time, that was enforced by the
3 Oklahoma State Department of Health.

4 Q Were the changes that you worked to achieve on
5 behalf of the Tobacco Institute, along with Ken Nance, deal
6 with the extent of the restrictions on use and the fines
7 for violations of the law?

8 A What do you mean by the -- I'm sorry, by the
9 extent?

10 Q In other words, you tried to get certain changes
11 or modifications made as the bill was going through its
12 process in the legislature, and was one of those attempting
13 to have less restrictions on tobacco use?

14 A Yes, sir.

15 Q Okay. And also, you attempted to make sure that
16 any penalties for violations of the law would be less than
17 had been proposed?

18 A I don't know that they were less than what had
19 been proposed because I don't know what had been proposed.

20 Q Well, from your recollection, were you trying to
21 get the fines increased, the penalties increased?

22 A No, of course not.

23 Q Okay. So were you trying to get them to stay the
24 same?

25 A If that's what they were in the original. See,

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1 that's the problem. If it was \$100 in the original bill,
2 that's what stayed in there. I know -- that's all I know.
3 I don't know whether it had been higher than that or not.

4 Q Okay. What -- if you know, what was the reason
5 that the Tobacco Institute wanted fines to be reasonable,
6 as you say?

7 A Well, just for that. I think that they didn't
8 want to see any onerous restrictions or -- I'm sorry, fines
9 that, you know, \$1,000 or whatever for lighting up in a
10 restaurant, or whatever, wherever it's prohibited.

11 Q Why did the Tobacco Institute care if the fines
12 were \$1,000 or \$10,000?

13 MR. STEWART: Objection to the form.

14 Q (BY MR. MIKHAIL) If you know?

15 A I really don't.

16 Q Isn't it reasonable to conclude, Mr. Matheson,
17 that if the fines were high that it would be a deterrent to
18 use of tobacco products?

19 MR. STEWART: Object to the form.

20 MR. CREMIN: Object to the form of the question.

21 Q (BY MR. MIKHAIL) You may answer.

22 A I think that's probably true.

23 Q Okay. And then there would be less profit for
24 the industry, correct?

25 MR. STEWART: Same objection.

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01:33:10 1 MR. CREMIN: Object as to form of the argument.

01:33:13 2 MR. MIKHAIL: Use this on cross examination.

01:33:14 3 Your objection will be noted for the record.

01:33:17 4 MR. CREMIN: All right.

01:33:17 5 A At that time, and really today, I don't know
01:33:19 6 anything about how the profit structure is. And as I
01:33:22 7 understand it, the Tobacco Institute is a trade
01:33:25 8 association, they don't have any profits.

01:33:26 9 Q (BY MR. MIKHAIL) Okay. But it is reasonable to
01:33:29 10 conclude, isn't it, Mr. Matheson, that if there's less use
01:33:33 11 of tobacco products, there would be less profit for the
01:33:37 12 manufacturers of tobacco, correct?

01:33:39 13 MR. STEWART: Objection to form.

01:33:40 14 A You have a tendency to raise the prices when that
01:33:44 15 happens.

01:33:44 16 Q (BY MR. MIKHAIL) But isn't that true, though?

01:33:48 17 A It's a reasonable argument, and I don't -- you
01:33:52 18 know, I don't have any idea to know whether it's true or
01:33:55 19 not because in Oklahoma, we have a lot of Indian smoke
01:33:58 20 shops and so the same products might be sold but the state
01:34:03 21 wouldn't get the benefit of the tax revenue.

01:34:06 22 Q But the tobacco manufacturers, as business, they
01:34:13 23 were concerned about their profits, correct?

01:34:14 24 A I'm certain they were, yes, sir.

01:34:16 25 Q And they wanted their profits to be more as

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01:34:18 1 opposed to less, correct?

01:34:19 2 A Most businesses do, yes, sir.

01:34:21 3 Q And their profits won't be more if there was less
01:34:25 4 use of their product, correct?

01:34:26 5 MR. STEWART: Object to the form.

01:34:28 6 A I would think that's correct.

01:34:30 7 Q (BY MR. MIKHAIL) Okay. Any other projects with
01:34:32 8 TI?

01:34:33 9 A No, sir.

01:34:33 10 Q What was the outcome -- well, let me ask you
01:34:35 11 this: In your assessment, did you accomplish for the
01:34:40 12 Tobacco Institute, along with Ken Nance, what you set out
01:34:43 13 to accomplish on the proposed smoking in public places law?

01:34:47 14 A At the time, as I recall, the Tobacco Institute
01:34:53 15 didn't like what was the final result at that time. Since
01:34:58 16 then, they have concluded that it was -- that they like it.

01:35:03 17 Q Okay. What happened, do you know, that made them
01:35:06 18 change their mind?

01:35:07 19 A I think the subject of preemption, in that they
01:35:16 20 liked that, they ended up liking that concept.

01:35:19 21 Q Preemption was a part of the proposed bill; was
01:35:21 22 it not?

01:35:23 23 A It was not a part of the proposed bill. It was a
01:35:25 24 part of the final bill.

01:35:27 25 Q Okay. Was preemption in the final bill something

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01:35:30 1 that the Tobacco Institute wanted to see in the final bill?

01:35:37 2 A At the time, no, sir.

01:35:38 3 Q Okay. Do you know if anyone from the tobacco

01:35:40 4 industry, and I say tobacco manufacturers, not the Tobacco

01:35:43 5 Institute, worked to have -- to your knowledge, worked to

01:35:48 6 have preemption put into the final bill?

01:35:50 7 A I had no contact with any of those people at that

01:35:52 8 time, so --

01:35:53 9 Q Okay. On that -- I'm sorry, did you finish your

01:35:56 10 answer?

01:35:56 11 A Yes, I did.

01:35:57 12 Q On that proposed legislation dealing with smoking

01:35:59 13 in public places, did you work -- other than with Ken Nance

01:36:02 14 for TI, did you work with lobbyists for any tobacco

01:36:06 15 manufacturers?

01:36:06 16 A No, sir.

01:36:07 17 Q Were there lobbyists for the tobacco

01:36:10 18 manufacturers working on making changes or amendments or

01:36:14 19 modifications to that bill?

01:36:15 20 A I didn't -- I didn't have any contact with them,

01:36:19 21 if they were.

01:36:19 22 Q But do you know if they were?

01:36:21 23 A And I don't know.

01:36:22 24 Q Okay. What about did you work with lobbyists for

01:36:26 25 other organizations that had similar views as the Tobacco

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01:36:33 1 Institute? And what I'm talking about, did you work, for

01:36:37 2 instance, with the restaurant association?

01:36:39 3 A No, sir. My sole contact throughout that whole

01:36:43 4 thing was with Ken Nance.

01:36:44 5 Q Okay. So you did not work with lobbyists or

01:36:48 6 representatives --

01:36:49 7 A No, sir.

01:36:49 8 Q -- of other interest groups?

01:36:51 9 A No, sir, not that I recall at all.

01:36:52 10 Q Okay. Let's go back to the ordinance in Tulsa,

01:36:55 11 the proposed ordinance in Tulsa. What was the outcome of

01:36:59 12 that?

01:36:59 13 A It just kind of went away. Like I said, at that

01:37:04 14 time, we had a commission form of government. There were,

01:37:07 15 I believe, five commissioners and a mayor. The -- you've

01:37:18 16 got six people voting and then there were, you know, a

01:37:21 17 couple, maybe one or more of them, maybe two of the

01:37:27 18 commissioners that sort of had some interest in it and just

01:37:30 19 really wasn't a lot of -- didn't seem to be a lot of

01:37:32 20 interest on the commission in it at that time. They also,

01:37:36 21 as I recall, said, well, there's state legislation pending,

01:37:40 22 let's see what happens to that.

01:37:41 23 Q So no ordinance was passed in Tulsa?

01:37:44 24 A No, sir.

01:37:44 25 Q And did you have contact with any of the

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01:37:47 1 commissioners suggesting or attempting to have them either

01:37:55 2 vote against it or not pass the ordinance?

01:37:57 3 A Yes, sir.

01:37:58 4 Q How many of them?

01:38:01 5 A I personally am going to try to recall this. I'm

01:38:06 6 remembering because a couple of them have passed away now.

01:38:09 7 I'm trying to remember. I know I talked to staff people

01:38:15 8 for at least one commissioner who was then finance

01:38:19 9 commissioner, Ray Gardner. I talked to one of his staff

01:38:25 10 people, but I did not talk to him. I did talk specifically

01:38:28 11 to, I think, Mr. Metcalf and his assistant, and with -- I'm

01:38:43 12 trying to think. Houston, I can't remember if that's his

01:38:46 13 first name or his last name.

01:38:49 14 Q You don't have to remember all the names.

01:38:51 15 MR. CREMIN: Houston Adams.

01:38:53 16 A Okay. I specifically talked to him. I talked to

01:38:58 17 an aide to the mayor but not to the mayor directly.

01:39:01 18 Q (BY MR. MIKHAIL) Okay. You had mentioned

01:39:02 19 earlier that you had talked to some business people that

01:39:09 20 shared or had similar views as to the ordinance and you

01:39:12 21 encouraged them to speak up or attend the meetings and give

01:39:15 22 their view; isn't that correct?

01:39:16 23 MR. CREMIN: Object to the form of the question.

01:39:17 24 I think that's the reverse of what he testified to. I

01:39:19 25 think he testified to he didn't talk to any of them, he

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01:39:22 1 just sent notices to them and didn't know what their views

01:39:26 2 were is what his testimony was and not as you just

01:39:29 3 represented it.

01:39:29 4 Q (BY MR. MIKHAIL) Did you talk to -- personally

01:39:31 5 talk to various business people and ask them to present

01:39:36 6 their views?

01:39:37 7 A I sent mail to them asking them to come to

01:39:40 8 meetings and things.

01:39:41 9 Q Okay. You didn't talk to them personally?

01:39:43 10 A The only business person I talked to personally

01:39:46 11 that I can recall on that was a restaurant owner who also

01:39:50 12 happened to be a member of the City/County Health

01:39:52 13 Department, City/County Health board.

01:39:56 14 Q Okay. Mr. Matheson, are you telling me that you

01:39:58 15 didn't know what their view was going to be when you gave

01:40:01 16 them notice of the public meeting?

01:40:04 17 A I didn't know. I was -- I guess I had hopes that

01:40:10 18 their views would be similar to mine and my client's.

01:40:13 19 Q Okay. At the time that you were working as it

01:40:19 20 relates to this ordinance, were there any public health

01:40:23 21 officials, either local or -- when I say local, meaning

01:40:28 22 city or county or state, working to promote the passage of

01:40:33 23 the ordinance in Tulsa?

01:40:34 24 A Members of the City/County Health Department,

01:40:41 25 their board. They have a director, who was at that time a

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1 medical doctor. And there were doctors and attorneys and
2 restaurant owners on the board, so, yes, I -- in the sense
3 that the City/County Health Department was doing that,
4 there were, I guess, medical people, was that the question?
5 Q Public health officials were working to promote
6 the passage of use restrictions, and you were working on
7 behalf of your client to have less use restrictions,
8 correct?
9 A Yes, sir.
10 Q So you were at odds with the public health
11 officials?
12 A Yes, sir.
13 Q All right. Were there any voluntary health
14 groups, such as the American Cancer Society, the heart
15 association, lung association, you name it, working, to the
16 best of your recollection, in conjunction with or alongside
17 the public health officials to promote the ordinance?
18 A I never had any contact, if they were, or was
19 aware of any. There was one private doctor that I know, a
20 dentist, actually, who was working on it.
21 Q Okay. But you don't know if officially the
22 American Cancer Society or the heart association --
23 A No, sir. No, sir.
24 Q Okay. What about the smoking in public places
25 law, did public health officials work to have the bill

01:43:22 1 A Yes, sir.
01:43:22 2 Q Okay. And do you recall what major -- what main
01:43:28 3 assignments you had in the 1988 session? And that was when
01:43:35 4 you first came on. I thought maybe you could remember.
01:43:38 5 A Yeah, and I -- this has been 10 years ago, I
01:43:41 6 guess. I don't recall -- I mean, if I was shown a piece of
01:43:46 7 legislation or something dating to that time, I might
01:43:51 8 recognize it, but I don't recall a specific piece of
01:43:54 9 legislation at that time.
01:43:55 10 Q Okay. Did you -- were you already a full-time
01:43:57 11 lobbyist?
01:43:57 12 A Yes, sir.
01:43:57 13 Q Okay. In early 1988?
01:43:59 14 A Yes, sir.
01:43:59 15 Q Okay. And who did you report to, if anyone, at
01:44:05 16 R.J. Reynolds?
01:44:08 17 A At that time, I reported directly to Joe Murray,
01:44:13 18 III.
01:44:14 19 Q Do you remember what Joe Murray's position was at
01:44:16 20 RJR?
01:44:17 21 A Regional director for government relations, I
01:44:21 22 believe is how they titled it.
01:44:22 23 Q Okay. And Mr. Murray was, to the best of your
01:44:25 24 knowledge, an actual employee of RJR, correct?
01:44:28 25 A Yes, sir.

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1 passed with restrictions greater than what the Tobacco
2 Institute wanted?
3 A If they did at the time, I was not aware of it.
4 Q You don't recall?
5 A I don't -- I don't remember why, I just was not
6 aware of it.
7 Q You weren't aware of it at the time, if they
8 did. What about voluntary health groups at the time?
9 A Same thing, if there were -- if there were
10 people doing it, I was not aware of it.
11 Q Okay. And you said Stan Boman was the only
12 person other than -- you worked with Ken Nance, but Stan
13 Boman was the only other TI person that you dealt with?
14 A Yes, sir. I met some at a meeting in Denver one
15 time, but that's it.
16 Q Okay. All right. Then if I understand the
17 chronology of this, then you later that year became a
18 contract lobbyist for R.J. Reynolds, correct?
19 A Well, I guess to state it really accurately, I
20 became an hourly employee in a sense working on issues
21 related to the new cigarette product, and I did not during
22 that period of time, from whenever it was, September or
23 early October of 1987, I did not do any specific lobbying
24 until the following year.
25 Q Okay. So the lobbying began in early '88?

01:44:28 1 Q Okay. But you were a contract lobbyist?
01:44:30 2 A Yes, sir.
01:44:31 3 Q You were not paid a salary?
01:44:32 4 A No, sir, nor benefits.
01:44:39 5 MR. MIKHAIL: Kelly, can you take care of that.
01:44:41 6 Q (BY MR. MIKHAIL) Did you communicate with anyone
01:44:43 7 other than Joe Murray on a regular basis with RJR?
01:44:47 8 A No, sir, not on a regular basis.
01:44:49 9 Q Okay. And what did the communication consist of
01:44:52 10 primarily, were you reporting to him what was happening in
01:44:56 11 the legislature?
01:44:56 12 A Yes, sir.
01:44:57 13 Q Were you reporting to him what your activities
01:45:01 14 were in the legislature?
01:45:04 15 A Yes, sir.
01:45:09 16 Q In the 10 years or so that you have been a
01:45:14 17 lobbyist for R.J. Reynolds, did you work in conjunction
01:45:21 18 with other groups in Oklahoma that had overlapping
01:45:30 19 interests with RJR such as the grocer's association or the
01:45:35 20 retail association or the wholesaler's association or the
01:45:39 21 restaurant association?
01:45:41 22 A Well, I need to break some of those out because
01:45:44 23 wholesalers or retailers, no; restaurant association,
01:45:49 24 grocer's association, yes.
01:45:50 25 Q What about the Petroleum Marketer's Association?

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01:45:53 1 A Yes.

01:45:54 2 Q Did you work with any local or statewide smokers'

01:45:57 3 rights groups?

01:45:59 4 A Not directly. I had some phone calls and

01:46:05 5 contacts from a -- one group; actually, one person with one

01:46:10 6 group who would call me and ask me about pending

01:46:14 7 legislation, but it was not my job to work directly with

01:46:17 8 those people.

01:46:17 9 Q Okay. But when a piece of legislation was of

01:46:24 10 interest to R.J. Reynolds and the interest of other groups,

01:46:34 11 such as the restaurant association or the Petroleum

01:46:36 12 Marketer's Association coincided with R.J. Reynolds, did

01:46:42 13 you have communication with representatives of those

01:46:44 14 organizations?

01:46:45 15 A Yes, sir. And, really, in -- probably not until

01:46:51 16 sometime in the '90s did that kind of all come together. I

01:46:55 17 don't recall in the beginning, first two or three years of

01:47:00 18 having any dealings with those people, but after that, yes.

01:47:03 19 Q Okay. After -- can you tell me approximately

01:47:04 20 when?

01:47:05 21 A Sometime in '91 or so. I mean, I'm not saying

01:47:08 22 there wasn't any contact before that, that's what I recall.

01:47:10 23 Q And since 1991 -- approximately 1991, you have

01:47:14 24 had regular contact with representatives of those groups

01:47:17 25 who have had overlapping interests as R.J. Reynolds?

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01:47:21 1 MR. CREMIN: Object to the form of the question.

01:47:22 2 MR. STEWART: And also object to the time

01:47:24 3 period. I assume your questions aren't going beyond August

01:47:26 4 of '96?

01:47:28 5 MR. MIKHAIL: That's correct. That's the

01:47:29 6 cutoff.

01:47:30 7 MR. STEWART: That's what's allowed, but I just

01:47:34 8 wanted to make that clear.

01:47:35 9 MR. MIKHAIL: That's fine.

01:47:35 10 THE WITNESS: I'd kind of like to ask you what

01:47:37 11 you mean by regular.

01:47:37 12 Q (BY MR. MIKHAIL) Let me ask it this way. If the

01:47:41 13 restaurant association perceives its interest to be similar

01:47:45 14 to that or coinciding with R.J. Reynolds, then when you

01:47:50 15 were working to either pass or defeat legislation, if they

01:47:54 16 had a similar view during these years that you were a

01:47:57 17 lobbyist for R.J. Reynolds, you worked along with them to

01:47:59 18 make sure that -- and coordinated your efforts, correct?

01:48:03 19 A In the latter -- yeah, in the last, let's say,

01:48:06 20 seven or eight years, yes, sir.

01:48:08 21 Q All right. And R.J. Reynolds also made financial

01:48:10 22 contributions to assist those groups in their lobbying

01:48:14 23 efforts for positions that RJR favored or opposed in the

01:48:19 24 legislature, correct?

01:48:20 25 MR. STEWART: Object to the form.

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01:48:21 1 A I don't have -- I know that there was contact

01:48:25 2 between the restaurant association and the people in

01:48:28 3 Winston-Salem, and I think I may have had some contact with

01:48:33 4 the people at Reynolds. Primarily what occurred, as I

01:48:37 5 understand it, is that they became associate members of

01:48:41 6 either the restaurant association or maybe the grocer's

01:48:45 7 association and either contributed or paid dues of a

01:48:52 8 certain amount to assist them, yes, sir.

01:48:56 9 Q Okay. Mr. Matheson, how were decisions made when

01:49:01 10 you -- in your work as R.J. Reynolds in the time period

01:49:03 11 that you worked as a lobbyist, how were decisions made for

01:49:11 12 you to either oppose or promote legislation? In other

01:49:15 13 words, did it come from R.J. Reynolds to you or did you

01:49:19 14 alert R.J. Reynolds about something that was going on that

01:49:22 15 you had a sense that they would be interested in? How did

01:49:25 16 that work?

01:49:26 17 A Well, my job for Reynolds as a, what's called a

01:49:32 18 proactive lobbyist, is to track any and all legislation

01:49:36 19 which may affect them, and that might be something in --

01:49:41 20 could be something in tort reform, advertising, smoking

01:49:44 21 restrictions, other types of restrictions. So it was my

01:49:50 22 job to let them know what was happening in the Oklahoma

01:49:53 23 legislature, so when legislation comes up that I think

01:49:58 24 might have some impact on them, then I would either call

01:50:04 25 them -- call directly or send a memo about that legislation

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01:50:10 1 and maybe a copy of the legislation, if I had it at that

01:50:13 2 time.

01:50:13 3 Q Okay. And they would then either let you know

01:50:15 4 whether they wanted you to do anything vis-a-vis that --

01:50:20 5 A Generally, yes. Yes, sir.

01:50:22 6 Q Okay. As a lobbyist for R.J. Reynolds, did you

01:50:26 7 ever work in arranging for contributions to be made by R.J.

01:50:30 8 Reynolds to various legislators, campaign contributions?

01:50:34 9 A Campaign contributions, yes, sir.

01:50:38 10 Q Was that pretty much on a regular basis?

01:50:41 11 A It was really every two years.

01:50:43 12 Q When elections --

01:50:44 13 A When it was election time, yes, I did do that,

01:50:48 14 yes, sir.

01:50:49 15 Q And what did you do, Mr. Matheson, did you

01:50:50 16 contact Joe Murray or anyone else at R.J. Reynolds and say,

01:50:53 17 representative so and so or senator so and so needs our

01:50:56 18 help or he or she is someone that we need to support?

01:50:59 19 A Generally, what would occur, and we're talking

01:51:04 20 about what I consider limited amounts of money, I would

01:51:10 21 submit to -- and originally Joe Murray was the regional

01:51:17 22 director and there have been three different ones over the

01:51:22 23 years since then, I believe, as I recall, I would submit a

01:51:27 24 list of names from the Senate and the House and suggested

01:51:31 25 contribution amounts and then they would go through that

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1 and look at the budget and determine whether or not, you
2 know, they could do it or not or would do it.
3 Q Okay. And what was the reason you would be
4 asking for certain contributions for certain
5 representatives or candidates and not others?
6 A And not others?
7 Q Right.
8 A I think the same as with other clients I have, is
9 that you don't support people who are -- whose actions or
10 beliefs, or whatever, are inimical to your interests. You
11 try to support people who you believe will at least listen
12 to your arguments and who will give you kind of an open and
13 fair consideration of your arguments.
14 Q All right. Isn't it true, Mr. Matheson, that you
15 arranged or suggested that contributions be made by R.J.
16 Reynolds to candidates or representatives who are running
17 for re-election who favored less use restrictions as
18 opposed to more on the use of tobacco products?
19 A I don't know that I ever looked at it directly
20 that way.
21 Q The reason I ask you is you said more in their
22 interests, and I want to know what their interests are.
23 Less use restrictions is one, correct?
24 A Taxes and a number of things, yes.
25 Q Less taxes on cigarettes?

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1 A Well, not less, no increases. You hardly ever --
2 taxes never go away once they're on.
3 Q Okay. They never go down. No increases on
4 excise taxes?
5 A Yes, sir.
6 Q Okay. That's one interest?
7 A Yes, sir.
8 Q Tort reform is another interest?
9 A Yeah. And it's been fairly limited, frankly,
10 from my perspective because tort is such an arcane area, I
11 think, at least to me. It's a mystery. And I've never
12 worked directly on it. I did provide information to the
13 people at Reynolds which, I don't know what they did with
14 it, I assume went off to the lawyers or something, but when
15 tort reform type bills were passing or were in process, I
16 only remember one specific time that I gave them quite a
17 bit of information.
18 Q Okay. What about on legislators or candidates
19 who had a position one way or the other on protective
20 orders by courts in litigation involving allegations of
21 hazards of a product, a manufacturer's product, did you
22 ever take that into consideration in making a
23 recommendation for contributions?
24 A No, sir.
25 Q Okay. In your years as an RJR lobbyist, did you

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01:54:30 1 ever work on behalf of RJR to defeat any proposal?
01:54:38 2 MR. CREMIN: I think they're going to land right
01:54:39 3 out in front here.
01:54:40 4 THE WITNESS: System skip.
01:54:45 5 Q (BY MR. MIKHAIL) To defeat proposed legislation
01:54:48 6 in the Oklahoma legislature to prohibit courts from sealing
01:54:53 7 or making -- or keeping confidential records in litigation
01:54:58 8 that involve a public hazard of a product?
01:55:01 9 A No, sir.
01:55:01 10 Q Okay. I saw some documents to that effect from
01:55:03 11 the documents produced by the defendants as legislation of
01:55:08 12 concern to them. I'm asking you, from your work and your
01:55:12 13 experience with R.J. Reynolds, you don't recall any
01:55:14 14 specific instance when you worked to defeat such proposed
01:55:19 15 legislation?
01:55:20 16 A No, sir.
01:55:20 17 Q Okay. You also, as a lobbyist for R.J. Reynolds,
01:55:27 18 or have you over the years, worked to arrange sponsorships
01:55:31 19 for various events such as barbecues and fish fries and
01:55:37 20 that sort of thing for legislators?
01:55:40 21 A More golf tournaments than anything else.
01:55:42 22 Q I guess the fish fries are Mississippi more so.
01:55:45 23 MR. CREMIN: We do those.
01:55:46 24 A Well, we do those, and I have in the past
01:55:49 25 arranged to help sponsor a tobacco industry -- for a couple

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01:55:54 1 of three years, we did a tobacco industry barbecue, but we
01:56:00 2 no longer do that because of changes in the ethics laws
01:56:04 3 makes it impossible for us to figure out how much is spent
01:56:07 4 on each individual, so we don't do them any more.
01:56:11 5 Q Okay. Golf tournaments?
01:56:12 6 A Golf tournaments.
01:56:13 7 Q Tennis tournaments?
01:56:14 8 A No, no.
01:56:16 9 Q Golf tournaments?
01:56:18 10 A Mostly golf tournaments, and there's half a dozen
01:56:20 11 of those a year. I don't always have them participate,
01:56:23 12 but --
01:56:23 13 Q Have you as a lobbyist for R.J. Reynolds over the
01:56:26 14 years arranged for or facilitated witnesses to appear,
01:56:32 15 expert witnesses -- strike that. Expert witnesses to
01:56:35 16 appear before legislative committees considering
01:56:39 17 legislation affecting your client?
01:56:43 18 A No, sir, I don't think so. I'm trying to recall
01:56:46 19 an incident, maybe sometime in -- you know, in late '80s,
01:56:53 20 early '90s, where somebody did come in, but I don't recall
01:56:57 21 being involved in getting that person there.
01:56:58 22 Q Okay. What about as to dealing with indoor air,
01:57:01 23 clean air legislation, did you arrange for R.J. Reynolds to
01:57:07 24 have expert witnesses appear before legislative committees
01:57:11 25 considering such legislation dealing with the quality of

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<p>01:57:14 1 indoor air?</p> <p>01:57:15 2 A No, sir.</p> <p>01:57:20 3 Q Have you heard of an organization called APCO?</p> <p>01:57:23 4 A No, sir.</p> <p>01:57:29 5 Q Have you heard of the name of a gentleman by the</p> <p>01:57:43 6 name of Neil Cohen?</p> <p>01:57:46 7 A No, sir, I don't think so.</p> <p>01:57:55 8 Q Have you worked as a lobbyist with R.J. Reynolds</p> <p>01:57:58 9 in conjunction with representatives of the Vending Machine</p> <p>01:58:03 10 Operators Association or vending machine concerns?</p> <p>01:58:07 11 A Only in the sense that I believe one or more</p> <p>01:58:13 12 tobacco lobbyists do some work for vending machine</p> <p>01:58:17 13 companies, but I have never worked on vending issues for --</p> <p>01:58:22 14 that would be considered working for the vending machine</p> <p>01:58:25 15 companies or helping the vending machine companies.</p> <p>01:58:27 16 Q Okay. But do you recall any legislation that</p> <p>01:58:31 17 related to vending machine sale of cigarettes through</p> <p>01:58:34 18 vending machines that you, as a lobbyist for RJR, worked in</p> <p>01:58:38 19 conjunction with representatives of or lobbyists for the</p> <p>01:58:41 20 vending association?</p> <p>01:58:41 21 A I have never, to my knowledge, worked with</p> <p>01:58:44 22 vending machine company lobbyists on behalf of vending</p> <p>01:58:53 23 machines. Now, you know, I can say that in a specific act</p> <p>01:58:58 24 there was in discussion of vending machines, but I never</p> <p>01:59:01 25 worked with vending machine companies.</p>	<p>02:01:15 1 tobacco use or the addictive nature of nicotine?</p> <p>02:01:20 2 MR. STEWART: Object to the form. Go ahead.</p> <p>02:01:21 3 A You're talking about one on one, you mean?</p> <p>02:01:23 4 Q (BY MR. MIKHAIL) Or to a group of legislators,</p> <p>02:01:27 5 when you were dealing with them on legislation, whether to</p> <p>02:01:29 6 pass it or defeat it.</p> <p>02:01:30 7 A Go back again. Tell me again. There were two or</p> <p>02:01:33 8 three items there and I'd like to --</p> <p>02:01:35 9 Q Okay. In -- over the 10 years or so that you</p> <p>02:01:38 10 represented R.J. Reynolds, can you think of an instance</p> <p>02:01:40 11 when you communicated to a legislator or group of</p> <p>02:01:43 12 legislators information from R.J. Reynolds on the harmful</p> <p>02:01:46 13 effects of tobacco use or the addictive nature of</p> <p>02:01:51 14 nicotine?</p> <p>02:01:53 15 MR. STEWART: Same objection.</p> <p>02:01:54 16 A Never to my knowledge on the addictive nature,</p> <p>02:01:57 17 what you call the addictive nature of nicotine, and that</p> <p>02:02:02 18 one instance I mentioned just a couple of minutes ago when</p> <p>02:02:05 19 I gave a packet to probably 25 or 30 legislators on, you</p> <p>02:02:09 20 know, various newspaper items and a card from Reynolds that</p> <p>02:02:14 21 may have discussed something related to health, but it --</p> <p>02:02:18 22 other than that, I don't recall any other instance.</p> <p>02:02:20 23 Q (BY MR. MIKHAIL) Okay. Do you --</p> <p>02:02:22 24 MR. CREMIN: Counsel, just for my understanding,</p> <p>02:02:24 25 and I'm not in this litigation for the long haul like you</p>
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<p>01:59:03 1 Q Okay. Mr. Matheson, when you, over the last 10</p> <p>01:59:13 2 or so years that you have worked as a lobbyist for R.J.</p> <p>01:59:16 3 Reynolds, communicate with a legislator about legislation</p> <p>01:59:26 4 that deals with use restrictions or taxes or any other</p> <p>01:59:32 5 subject that affects your client, have you communicated to</p> <p>01:59:39 6 the legislators any information about the health</p> <p>01:59:45 7 consequences of the product that your client produces and</p> <p>01:59:50 8 sells in Oklahoma?</p> <p>01:59:52 9 A That would not be something I would normally do.</p> <p>01:59:55 10 I do recall sometime in the last five or six years I put</p> <p>02:00:02 11 together a set of four or five different things, including</p> <p>02:00:10 12 an article from a Detroit newspaper, something from a</p> <p>02:00:16 13 business type publication relating to the economics of</p> <p>02:00:20 14 environmental tobacco smoke, ETS, secondhand smoke,</p> <p>02:00:24 15 whatever, various names for it. And I -- and there were</p> <p>02:00:30 16 about four or five pieces, including a card from -- that</p> <p>02:00:36 17 R.J. Reynolds had produced that was, in my view, was a</p> <p>02:00:41 18 recitation of the EPA's position on secondhand smoke. I</p> <p>02:00:46 19 didn't view it as, quote, health related, but there may</p> <p>02:00:51 20 have been some references to health in it.</p> <p>02:00:54 21 Q Okay. Do you recall any instances when you</p> <p>02:00:59 22 communicated to a legislator, as you were dealing with that</p> <p>02:01:03 23 legislator on some pending legislation that affected</p> <p>02:01:08 24 tobacco, do you recall presenting information on behalf of</p> <p>02:01:12 25 your client to that legislator about the harmful effects of</p>	<p>02:02:28 1 guys were, but I thought you had earlier said this all ends</p> <p>02:02:33 2 August of '96, and so when you say ten years, it would</p> <p>02:02:37 3 actually only be about seven years and ten months, it</p> <p>02:02:39 4 sounds like to me.</p> <p>02:02:40 5 MR. MIKHAIL: I apologize, let's just say the</p> <p>02:02:43 6 period --</p> <p>02:02:43 7 MR. CREMIN: Not to be technical or anything.</p> <p>02:02:45 8 MR. MIKHAIL: That's what the Court order</p> <p>02:02:45 9 provides, so --</p> <p>02:02:45 10 MR. CREMIN: That's what I understand.</p> <p>02:02:45 11 Q (BY MR. MIKHAIL) The period that we're allowed</p> <p>02:02:47 12 to ask about.</p> <p>02:02:47 13 A In the back of my mind kind of what that is,</p> <p>02:02:50 14 somewhere in August of '96, I guess.</p> <p>02:02:53 15 Q Okay. You don't wish to amend or modify your</p> <p>02:02:56 16 answer based on his -- I think he was just making</p> <p>02:03:00 17 clarification for the record.</p> <p>02:03:01 18 MR. CREMIN: Yeah, that's all. I assume that</p> <p>02:03:02 19 what he's talking about he did sometime before August of</p> <p>02:03:04 20 '96.</p> <p>02:03:06 21 THE WITNESS: Yes.</p> <p>02:03:06 22 Q (BY MR. MIKHAIL) All right. You would agree</p> <p>02:03:07 23 with me, would you not, Mr. Matheson, that legislation that</p> <p>02:03:10 24 deals with use restrictions has an impact on public health</p> <p>02:03:16 25 in Oklahoma, does it not?</p>

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1 MR. STEWART: Objection, form.

2 A I wouldn't necessarily agree with you, no, sir.

3 Q (BY MR. MIKHAIL) You don't believe that less use
4 or more use of cigarettes would have any implications on
5 the public health?

6 MR. STEWART: Objection to form.

7 A I don't have any way of knowing that. I mean,
8 I'm not a doctor, I'm not a scientist; I don't know.

9 Q (BY MR. MIKHAIL) Okay. You don't know if more
10 use of cigarettes would promote the public health or would
11 be disadvantageous or harmful to the public health?

12 MR. STEWART: Object to form.

13 A No, sir. No, sir, I do not.

14 Q (BY MR. MIKHAIL) Okay. Well, do you think as a
15 lobbyist, whatever client you're representing but including
16 R.J. Reynolds, when you are promoting the passage of
17 legislation or working to defeat legislation that any
18 health consequences resulting from whatever ultimate law
19 passes is important, health consequences to Oklahomans?

20 MR. STEWART: Objection to form.

21 Q (BY MR. MIKHAIL) You don't think as a lobbyist
22 that that is important?

23 MR. STEWART: Same objection.

24 A I think it's important.

25 Q (BY MR. MIKHAIL) Okay. If it's important, then

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1 tell me why you have not in the time period we're talking
2 about as a lobbyist for R.J. Reynolds presented information
3 to legislators when they were considering legislation on
4 the harmful effects of your client's product or the
5 addictive nature of nicotine in that product?

6 MR. STEWART: Objection to form.

7 A I've never received any information from my
8 client that says anything about the addictive nature or the
9 health effects of their product.

10 Q (BY MR. MIKHAIL) Okay. Isn't it true,
11 Mr. Matheson, that in working as a lobbyist for R.J.
12 Reynolds, that the issue of the health effects of the
13 product or the addictiveness of the product was not a
14 consideration in your lobbying activity for R.J. Reynolds?

15 A Say that again, please. I'm sorry.

16 Q The health issue of the use of the product was
17 not a consideration that R.J. Reynolds had or that you had
18 on behalf of R.J. Reynolds in working to either pass or
19 defeat legislation?

20 MR. STEWART: Objection to form.

21 A No, sir.

22 Q (BY MR. MIKHAIL) Health was not a consideration,
23 correct?

24 A No, sir -- yeah, you're correct, health was not a
25 consideration.

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02:05:47 1 Q Was not a consideration. Okay. So if -- strike
02:06:00 2 that.

02:06:04 3 Were you aware of a statement made by members of
02:06:10 4 the tobacco industry back in 1954 called the Frank
02:06:14 5 Statement? Have you heard of that?

02:06:16 6 A No, sir.

02:06:17 7 Q Okay. Well, you haven't heard of the statement,
02:06:20 8 but let me ask you this. Have you heard any reference to
02:06:24 9 the statement that the tobacco industry made a statement
02:06:26 10 publicly that health concerns are of paramount
02:06:30 11 consideration to them?

02:06:31 12 A No, sir.

02:06:32 13 Q You have not heard that?

02:06:33 14 A No, sir.

02:06:34 15 Q Okay. If, in fact, what I'm representing to you
02:06:37 16 is true, and I will represent to you that it is true, that
02:06:39 17 the Frank Statement in 1954 said that health is a paramount
02:06:44 18 consideration in the tobacco business, that would be
02:06:47 19 contrary to what the considerations are in the lobbying
02:06:50 20 activities of R.J. Reynolds in Oklahoma, correct?

02:06:52 21 MR. STEWART: Objection, form.

02:06:53 22 A I don't know. I'm sorry, but I mean, I don't
02:06:59 23 know what that statement said. You represented it to me as
02:07:04 24 saying something and I don't doubt your word. I don't know
02:07:07 25 exactly what they said, but as long as I have been employed

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02:07:10 1 by the tobacco industry, we have not used health as a
02:07:17 2 factor or as a method or a tool, or whatever, in lobbying.

02:07:22 3 Q (BY MR. MIKHAIL) Okay. But you have testified
02:07:24 4 that health is not a consideration in the lobbying
02:07:27 5 activities for or against legislation as it relates to R.J.
02:07:30 6 Reynolds, correct?

02:07:30 7 A Yes, sir.

02:07:31 8 Q Okay. And I'm telling you that the tobacco Frank
02:07:35 9 Statement said that health is a paramount consideration to
02:07:39 10 the tobacco industry members, the manufacturers. Those two
02:07:43 11 are inconsistent, are they not?

02:07:48 12 MR. STEWART: Objection, form.

02:07:49 13 Q (BY MR. MIKHAIL) You may answer.

02:07:50 14 A If they said in 1954 that health was a paramount
02:08:01 15 consideration -- did they say that was a paramount
02:08:06 16 consideration in lobbying?

02:08:07 17 Q No, they did not.

02:08:09 18 A Then I can't -- I'm sorry, I'm having trouble
02:08:11 19 equating the two then because if they said health was a
02:08:14 20 paramount concern --

02:08:15 21 Q In their business.

02:08:17 22 A -- in their business, and I can only relate it
02:08:20 23 to what's been told to me in lobbying and how I go about
02:08:25 24 lobbying, and nobody has ever said to me that health is a
02:08:28 25 paramount concern.

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02:08:29 1 Q Okay. So health is not a -- the lobbying
02:08:33 2 activities don't reflect -- in the tobacco activities,
02:08:36 3 tobacco lobbying activities don't reflect that health is a
02:08:41 4 paramount consideration?
02:08:42 5 MR. STEWART: Objection, form.
02:08:43 6 A Not in mine.
02:08:45 7 Q (BY MR. MIKHAIL) Your experience with R.J.
02:08:47 8 Reynolds?
02:08:47 9 A Yes, sir.
02:08:47 10 Q In Oklahoma?
02:08:48 11 A Yes, sir.
02:08:52 12 MR. MIKHAIL: Do you want to take a break? Let's
02:08:53 13 take a break.
02:08:54 14 MS. POTTER: Off the record at 02:08:55.
02:09:01 15 (A recess was had.)
02:28:34 16 MS. POTTER: Back on the record at 02:28:38.
02:28:39 17 Q (BY MR. MIKHAIL) Mr. Matheson, when we just took
02:28:43 18 a break now, did you discuss or did any of the counsel for
02:28:47 19 the defendants here or your counsel discuss with you any of
02:28:50 20 the answers that you gave since the last break?
02:28:55 21 A We discussed the framing of the answers.
02:29:00 22 Q Any particular answer?
02:29:07 23 A A couple of -- a couple of answers as they
02:29:11 24 related to the way I responded on -- in effect, agreeing
02:29:16 25 with you when you said do you agree or would it be

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02:29:19 1 reasonable that it's --
02:29:24 2 MR. CREMIN: I don't want you to answer any more
02:29:25 3 than that because any more than that would invade my
02:29:29 4 privilege with him.
02:29:29 5 Q (BY MR. MIKHAIL) I don't want to invade the
02:29:31 6 privilege. What I'm trying to do is substance-wise, did
02:29:35 7 counsel discuss with you the substance of your answer; in
02:29:37 8 other words, an answer you gave or didn't give?
02:29:39 9 A No, sir.
02:29:40 10 Q Okay. When you received the notice of deposition
02:29:47 11 and subpoena, what did you do first when you received it,
02:29:54 12 did you call anyone, did you --
02:29:55 13 A Yeah, I did. I sure did.
02:29:58 14 Q Call Pat?
02:29:59 15 A No, I eventually called Pat, but I called --
02:30:05 16 actually, that evening I sent a fax to my now regional
02:30:13 17 director Henry Stokes at R.J. Reynolds, and I may have sent
02:30:19 18 a copy to Mr. Stewart, I don't really remember, because of
02:30:22 19 the dates of the subpoena. We had had this discussion back
02:30:26 20 in April and early May that I didn't want to get deposed
02:30:30 21 towards the last couple of weeks of session because it's an
02:30:34 22 extremely busy time and I didn't want my vacation
02:30:38 23 interrupted. I take every year for the last 25 years and I
02:30:41 24 go fishing in northern Minnesota, and the dates of
02:30:45 25 production were the day I'm supposed to leave town and the

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02:30:48 1 deposition was set for three or four days before I was
02:30:52 2 supposed to get back.
02:30:53 3 Q Okay. Other than scheduling problems, and I know
02:30:55 4 you've talked to David or someone on your behalf has talked
02:30:58 5 to David about rescheduling, but other than the logistics
02:31:02 6 of the deposition and the production of documents, did you
02:31:04 7 discuss what testimony you might anticipate giving with
02:31:09 8 anyone from R.J. Reynolds?
02:31:10 9 A No, sir.
02:31:11 10 Q Did you discuss it with any counsel for any of
02:31:14 11 the tobacco manufacturers?
02:31:16 12 A No, sir.
02:31:17 13 Q Did you have any kind of preparation session for
02:31:20 14 this deposition today with any counsel, any lawyer?
02:31:23 15 A Yes, sir.
02:31:23 16 Q Who is that?
02:31:24 17 A Mr. Cremin and Mr. Stewart yesterday.
02:31:29 18 Q Was it the first session that you had in
02:31:31 19 preparation for the deposition?
02:31:33 20 A Yes, sir.
02:31:33 21 Q Okay. No other lawyers were present?
02:31:38 22 A No, sir.
02:31:39 23 Q Okay. Did Mr. Stewart -- again, I'm not trying
02:31:54 24 to invade your privileges, but did Mr. Stewart or
02:31:58 25 Mr. Cremin -- am I pronouncing your name correctly?

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02:32:01 1 MR. CREMIN: You're about the only person that's
02:32:03 2 ever done it in history.
02:32:04 3 MR. MIKHAIL: Well, I'm Mikhail and so I
02:32:08 4 sympathize.
02:32:09 5 MR. CREMIN: I always get Cramer and Cremins.
02:32:13 6 It's Cremin like a Cremin, no i-l.
02:32:17 7 Q (BY MR. MIKHAIL) Other than giving you, you
02:32:19 8 know, procedure and tips on just depositions in general,
02:32:23 9 since that's what lawyers do with their clients, did they
02:32:25 10 discuss the substance of proposed testimony?
02:32:29 11 A No.
02:32:29 12 Q In other words, did they say there's certain
02:32:32 13 things that you need to say or certain things you don't
02:32:34 14 need to voice anything on?
02:32:35 15 A No. They said I need to tell the truth.
02:32:37 16 Q Okay. But you did not discuss the substance of
02:32:40 17 your testimony?
02:32:40 18 A No, sir.
02:32:40 19 Q Okay. Do you believe, Mr. Matheson, that a
02:32:51 20 manufacturer of a product such as R.J. Reynolds, whom you
02:32:55 21 represent as a lobbyist, has a duty to warn consumers of
02:33:00 22 that product in Oklahoma about the dangers of the product?
02:33:04 23 MR. STEWART: Objection, form.
02:33:04 24 A I don't know what they think the dangers are or
02:33:11 25 if they think there are any dangers. It would be real hard

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1 for me to --

2 Q (BY MR. MIKHAIL) Okay. In your lobbying
3 activity, did R.J. Reynolds ever inform you of any dangers
4 of their product?

5 A No, sir.

6 Q Did they ever inform you anything about the
7 addictive nature of nicotine in the product?

8 MR. STEWART: Objection, form.

9 A No, sir.

10 Q (BY MR. MIKHAIL) Okay. Did they ever share with
11 you any internal research or internal documents or internal
12 information they had about the health consequences of their
13 product or the addictiveness of their product?

14 A No, sir.

15 Q Is there a code of ethics for lobbyists in
16 Oklahoma? Is there an association of lobbyists, is there a
17 code of ethics that you --

18 A No, but --

19 MR. CREMIN: Wait a minute. Object to the form
20 of the question. That's two questions, is there a code of
21 ethics, is there an association.

22 MR. MIKHAIL: I'll split them up. Thank you.
23 It's easy to fall in that trap sometimes. Let's split them
24 up.

25 Q (BY MR. MIKHAIL) Is there a code of ethics for

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1 lobbyists in Oklahoma?

2 A Are you asking me -- I mean, do lobbyists sit
3 down and draft code of ethics or are there some legal
4 standards?

5 Q Is there a law in Oklahoma that imposes certain
6 standards on lobbyists in their activities?

7 A Yes, sir.

8 Q Okay. Other than disclosure requirements as far
9 as who their clients are and expenses or finance, et
10 cetera, is there any ethical standards as far as their
11 conduct?

12 A Yes, sir.

13 Q By law?

14 A Yes, sir.

15 Q Okay. And what are those?

16 A Generally, one, you can't lobby on a contingency
17 fee basis. That's a felony. You are forbidden from
18 providing information to legislators that you know to be
19 untrue. You -- like I say, we have to register, file
20 reports twice a year, but the primary -- I think the
21 primary, I guess ethical standard in that would be that you
22 cannot, you know, present anything that you don't believe
23 to be accurate and true and that you can't, you know,
24 violate the spending limits and things of that nature.

25 Q Did you have a duty and do you have a duty,

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02:35:37 1 actually, up until August, 1996, is that the cutoff,
02:35:42 2 August, '96?

02:35:44 3 MR. CREMIN: Uh-huh.

02:35:44 4 Q (BY MR. MIKHAIL) To provide legislators in
02:35:47 5 Oklahoma with truthful information in your lobbying
02:35:51 6 activities for R.J. Reynolds?

02:35:52 7 MR. STEWART: Objection, form.

02:35:53 8 A As I said, the law requires us to, you know, to
02:36:01 9 provide factual, truthful information.

02:36:03 10 Q (BY MR. MIKHAIL) Okay. Does it require you to
02:36:06 11 give complete information?

02:36:07 12 MR. CREMIN: Object to the form.

02:36:08 13 A No. I mean, you give whatever information that
02:36:16 14 you have or that you want to use.

02:36:18 15 Q (BY MR. MIKHAIL) But it has to be truthful?

02:36:19 16 A Yes, sir.

02:36:20 17 Q Okay. Let's go into the area of minors in
02:36:34 18 Oklahoma as it relates to smoking.

02:36:36 19 MR. CREMIN: Minors meaning juveniles and not
02:36:40 20 guys looking for coal?

02:36:44 21 MR. MIKHAIL: That's right.

02:36:44 22 THE WITNESS: Or gold.

02:36:45 23 MR. CREMIN: We don't have any gold, we have
02:36:47 24 coal.

02:36:47 25 Q (BY MR. MIKHAIL) Under age Oklahomans. What

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02:36:55 1 has, in your years of working as a lobbyist for R.J.

02:36:58 2 Reynolds has R.J. Reynolds' position been as to youth
02:37:04 3 smoking? And I say youth smoking, under age smoking.

02:37:09 4 A Assuming that our law is 18, which it is, that
02:37:12 5 we're talking about that?

02:37:13 6 Q Yes.

02:37:13 7 A And you say what has been --

02:37:16 8 Q What has been R.J. Reynolds' position as to
02:37:19 9 minors, under age Oklahomans, smoking cigarettes?

02:37:24 10 MR. CREMIN: Insofar as he knows or from --

02:37:27 11 Q (BY MR. MIKHAIL) From your work as a lobbyist,
02:37:29 12 what, if any, was R.J. Reynolds' position on that?

02:37:31 13 A The position has been consistently since I've
02:37:34 14 worked for them that it's been represented to me is that
02:37:40 15 the company does not -- actually, very strongly believes
02:37:46 16 that, you know, children, quote unquote, under 18 should
02:37:50 17 not smoke. I have been given, you know, programs and
02:37:55 18 literatures that they have produced to say that, you know,
02:38:00 19 children shouldn't smoke and programs to do that. That's
02:38:05 20 been the position.

02:38:06 21 Q Okay. And in any of the materials that were
02:38:14 22 furnished to you by R.J. Reynolds to give out as to under
02:38:21 23 age smoking or any of the positions that they stated to you
02:38:25 24 for you to convey to legislators, was anything mentioned
02:38:29 25 about the health consequences of the product?

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02:38:32 1 A Not that I recall, no, sir.
02:38:35 2 MR. CREMIN: Counsel, as a point of
02:38:37 3 clarification, in the answer to the previous question,
02:38:40 4 Mr. Matheson began with, "The company does not believe,"
02:38:44 5 and then he sort of bollixed it up and it may have come out
02:38:49 6 sounding like he said the company does not believe that
02:38:51 7 children under 18 should not smoke.
02:38:54 8 MR. MIKHAIL: Okay. You want to correct that?
02:38:55 9 MR. CREMIN: I think he needs to correct that.
02:38:57 10 I'm not sure but that's the way I heard it because I was
02:39:00 11 writing it down.
02:39:00 12 A Well, then let me make it real clear, if I can.
02:39:05 13 It has been the company's position that minors should not
02:39:07 14 smoke.
02:39:07 15 Q (BY MR. MIKHAIL) Has it been the company's
02:39:09 16 position that minors should not have access to tobacco
02:39:13 17 products?
02:39:13 18 A That would -- yes, that goes right along with it.
02:39:25 19 Q Has it been R.J. Reynolds' concern about under
02:39:33 20 age smoking because of health consequences of the product,
02:39:37 21 or is it because they're under age and they're not adults?
02:39:41 22 MR. CREMIN: You want --
02:39:45 23 Q (BY MR. MIKHAIL) From what you know of R.J.
02:39:47 24 Reynolds as their lobbyist, was their concern and their
02:39:51 25 opposition to under age smoking because of the health

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02:39:55 1 consequences of the product or because it's under age and
02:39:57 2 not adult smoking?
02:39:59 3 MR. STEWART: Object to the form.
02:39:59 4 A I can only tell you what's been represented to me.
02:40:02 5 Q (BY MR. MIKHAIL) What you know.
02:40:05 6 A And to me, that is that smoking is an adult
02:40:06 7 choice and that when they become adults, they can make that
02:40:09 8 choice.
02:40:09 9 Q Okay. What has been R.J. Reynolds' position in
02:40:24 10 the time period that we're talking about that you worked as
02:40:27 11 a lobbyist for them in the time frame that is allowed by
02:40:30 12 the Court as to preemption in laws dealing with under age
02:40:40 13 access to tobacco, minor's access to tobacco?
02:40:43 14 MR. CREMIN: In Oklahoma with regard to him?
02:40:46 15 Q (BY MR. MIKHAIL) Yes, in Oklahoma. I'm sorry.
02:40:49 16 A I don't recall any position on the issue of
02:40:52 17 preemption and minors, that being connected in any way.
02:40:56 18 Q Okay. Isn't it true, Mr. Matheson, that in 1994
02:41:04 19 as a result of the Synar Amendment, a youth prevention or
02:41:14 20 Prevention Youth Access To Tobacco Act was passed in
02:41:19 21 Oklahoma?
02:41:20 22 A Yes, sir.
02:41:20 23 Q All right. And you are familiar with the Synar
02:41:22 24 Amendment, aren't you?
02:41:24 25 A I've never read what the Synar -- I've heard

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02:41:27 1 about it and heard the Synar Amendment, but I've never seen
02:41:31 2 it or read it.
02:41:32 3 Q Okay. You can't tell me today what it generally
02:41:34 4 provided for?
02:41:40 5 A All I know is I was told somewhere along the way
02:41:46 6 that it required states to do something in the prevention
02:41:52 7 of youth smoking or we would lose, under what's called the
02:41:56 8 ADAMHA act, I don't even know what that is, but we would
02:42:00 9 lose funds that go to --
02:42:01 10 Q Mental health?
02:42:04 11 A -- drug and mental health programs.
02:42:07 12 Q Mike Synar was -- I know he's deceased now, but
02:42:11 13 he's from Oklahoma, correct?
02:42:11 14 A Yes, sir.
02:42:11 15 Q Okay. Did you know Congressman Synar?
02:42:13 16 A Quite well.
02:42:15 17 Q Okay. You, at least to my knowledge you
02:42:16 18 described the amendment correctly in that it required the
02:42:19 19 states enforce laws dealing with youth access. Did you, on
02:42:29 20 behalf of R.J. Reynolds, submit to any legislator a model
02:42:43 21 bill or a proposed bill on youth access as a result of the
02:42:50 22 Synar Amendment?
02:42:51 23 A I did not.
02:42:52 24 Q Do you know if any other tobacco manufacturer or
02:42:56 25 Tobacco Institute lobbyist did that?

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02:43:03 1 A And I'm trying to make sure, you know, I do this
02:43:08 2 correctly and understand this correctly because I think
02:43:12 3 I -- after the fact, I know that there was some piece of
02:43:16 4 model legislation that was given to some legislators. I
02:43:19 5 don't remember specifically who did that. I was not
02:43:22 6 present.
02:43:24 7 Q Okay. Do you know who was actually providing and
02:43:27 8 furnishing that model bill? I mean, which manufacturer,
02:43:32 9 was it the Tobacco Institute; do you know?
02:43:35 10 A No, sir, I don't know.
02:43:34 11 Q Okay. Were you aware, Mr. Matheson, when the
02:43:38 12 bill passed and became law after the Synar Amendment in
02:43:44 13 Oklahoma that the Tobacco Institute's law firm in
02:43:50 14 Washington D.C., Covington and Burling, had drafted a model
02:43:57 15 youth access bill as a result of Synar, were you aware of
02:44:00 16 that?
02:44:01 17 MR. MacLAREN: Object.
02:44:02 18 A No, sir.
02:44:05 19 Q (BY MR. MIKHAIL) Okay. Were you aware that a
02:44:08 20 model bill was furnished by the Tobacco Institute to
02:44:07 21 various lobbyists around the country to furnish -- in order
02:44:12 22 for them to furnish to legislators in their state?
02:44:16 23 A No, sir.
02:44:16 24 Q Okay. Are you aware that in the model bill for
02:44:23 25 Oklahoma that there was a preemption provision as it

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1 relates to youth access, that being that laws dealing with
2 youth access are to be on a statewide and not allow
3 local and communicates to pass more restrictive laws than
4 what the model bill proposed?

5 MR. STEWART: Object to the form.

6 MR. CREMIN: Object to the form of the question.

7 Q (BY MR. MIKHAIL) Did you understand the
8 question?

9 A I think so, but if you could just kind of run it
10 back at me one more time.

11 Q Were you aware that the youth access bill
12 proposed by the Tobacco Institute in Oklahoma was or had a
13 preemption provision in it?

14 MR. MacLAREN: Object to form.

15 A I'm aware that when the bill finally passed, it
16 had that in there. I don't know if it was in the original
17 draft or not.

18 Q (BY MR. MIKHAIL) Okay. And as it relates to
19 youth access laws and bills in Oklahoma, R.J. Reynolds has
20 been in favor of preemption as it related to youth access
21 laws in Oklahoma, has it not?

22 A You know, I really don't know that because when
23 the ADAMHA bill was passed, I obviously was involved in it
24 along with other tobacco lobbyists, but I didn't do the
25 direct dealing with legislators -- I mean, on the actual

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1 getting it drafted and introduced and that sort of thing.
2 So I just -- I can't answer that, I don't think.

3 Q Well, surely you knew at the time that when you
4 were working to have that legislation passed that it
5 contained a preemption provision as it related to youth
6 access laws?

7 A Yes, sir. Yes, sir.

8 Q And that's what R.J. Reynolds favored, a
9 preemption provision in the youth access law?

10 A I don't believe I ever had a discussion with them
11 on that.

12 Q Okay. But they didn't ask you or have you
13 attempt to work against preemption provision in that law,
14 did they?

15 A No, sir.

16 Q Okay. So they were satisfied and wanted a
17 preemption agreement in the minors law?

18 MR. STEWART: Objection to form.

19 Q (BY MR. MIKHAIL) Youth access laws?

20 MR. STEWART: Objection.

21 A See, the companies don't always agree on
22 everything.

23 Q (BY MR. MIKHAIL) Let's deal with R.J. Reynolds.
24 Was R.J. Reynolds in favor of the preemption provision in
25 the youth access law?

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02:46:52 1 MR. CREMIN: He already answered that, Counsel.

02:46:54 2 He doesn't know. I guess you could ask him ten times, but
02:46:56 3 he doesn't know.

02:46:57 4 A I never discussed it with them and I just -- I
02:47:01 5 mean, I really don't -- I can't truthfully answer that
02:47:05 6 question saying I know that because I never discussed it
02:47:08 7 with them.

02:47:08 8 Q (BY MR. MIKHAIL) Okay. But it had a preemption
02:47:11 9 provision and they didn't ask you to remove it?

02:47:13 10 A That's correct.

02:47:15 11 Q Could you explain to me, if you know, why R.J.
02:47:18 12 Reynolds is going along with or wanted or liked a
02:47:29 13 preemption provision in that law?

02:47:34 14 MR. STEWART: Objection to form.

02:47:35 15 A You used the -- you said went along with or liked
02:47:40 16 or wanted. Okay. Let me deal with went along because I
02:47:44 17 don't know about the others. Went along because -- I mean,
02:47:47 18 even if they didn't like it, probably in the sort of spirit
02:47:55 19 of cooperation, they may not have made any objection to it.

02:47:58 20 Q (BY MR. MIKHAIL) But they promoted passage of
02:48:00 21 that legislation, didn't they, Mr. Matheson?

02:48:03 22 A Through me, yes, sir.

02:48:03 23 Q Yes. And it included a preemption provision?

02:48:04 24 A Yes, sir.

02:48:06 25 Q Okay. Do you know why they were promoting

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02:48:09 1 passage of youth access law that contained a preemption
02:48:13 2 provision?

02:48:16 3 A The companies -- or the company, in my case,
02:48:20 4 Reynolds, I know we favor preemption clauses generally
02:48:24 5 because of -- so you have uniformity throughout the state
02:48:29 6 in enforcement of whatever those laws are, so you don't
02:48:36 7 have a local ordinance in Tulsa and maybe there's a company
02:48:40 8 that operates here in Tulsa and they operate in six or
02:48:43 9 other -- six or eight other towns in the state, that they
02:48:49 10 don't have to worry about how they enforce -- enforce one
02:48:55 11 law here, another one over here, another one over here,
02:48:58 12 another one over here. And that's the general reason for
02:49:00 13 the concept of preemption.

02:49:02 14 Q Okay. But as it specifically relates to youth
02:49:06 15 access laws, do you know why R.J. Reynolds was promoting
02:49:11 16 legislation relating to youth access that contained a
02:49:14 17 preemption provision?

02:49:15 18 MR. STEWART: Objection, form.

02:49:16 19 A The answer I just gave.

02:49:18 20 Q (BY MR. MIKHAIL) Okay. Were you aware when you
02:49:23 21 worked to promote that legislation dealing with youth
02:49:27 22 access with the preemption provision in it that enforcement
02:49:42 23 was to be at the state level and not at the local level?

02:49:50 24 A I'm trying -- I'm needing to think just a minute
02:49:54 25 because I know that now the law -- and it was changed --

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02:50:00 1 Q I understand.
02:50:01 2 A -- to allow enforcement at the local level. And
02:50:08 3 I believe at the time that bill passed, I think it provides
02:50:08 4 for enforcement at the local level through cooperation with
02:50:13 5 the state officials.
02:50:14 6 Q Right. But it did not allow local communities
02:50:18 7 and townships and cities to enforce youth access laws by
02:50:24 8 themselves, did it?
02:50:25 9 A As I recall the first bill that passed, I think
02:50:31 10 that's correct. I'm not sure.
02:50:32 11 Q Okay. And it also prohibited sting operations at
02:50:36 12 the local level by voluntary health groups, didn't it?
02:50:42 13 A What do you mean by voluntary health groups?
02:50:44 14 Q In other words, the heart association or the
02:50:46 15 cancer society couldn't go out there and do a sting
02:50:50 16 operation on a convenience store to see if they were
02:50:53 17 enforcing the youth access law?
02:50:57 18 A Well, I don't think we can give -- I don't think
02:51:01 19 the state -- well, I guess they could, but I don't think
02:51:03 20 the state is going to give any private organization the
02:51:08 21 authority to go out and enforce state law.
02:51:08 22 Q Okay. Well, you are aware in 1994 when you were
02:51:11 23 working to have that bill passed that one of the provisions
02:51:14 24 in the model bill that R.J. Reynolds wanted was that it
02:51:19 25 prohibited sting operations of that nature at the local

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02:51:22 1 level?
02:51:25 2 A I'm only aware that the final legislation that
02:51:28 3 passed prohibited private organizations from going out and
02:51:33 4 enforcing state law.
02:51:34 5 Q Okay. Were you aware that the youth access
02:51:39 6 provisions favored by R.J. Reynolds were against the
02:51:45 7 licensing of vendors, of tobacco vendors?
02:51:49 8 MR. STEWART: Objection, form.
02:51:51 9 A Against the licensing of vendors?
02:51:53 10 Q (BY MR. MIKHAIL) Including like retailers of
02:51:56 11 tobacco, convenience stores.
02:51:58 12 MR. STEWART: Same objection.
02:52:01 13 A They've always been licensed.
02:52:04 14 Q (BY MR. MIKHAIL) They were licensed before the
02:52:07 15 youth access law in 1994?
02:52:10 16 A Yes, sir.
02:52:13 17 Q How long have they been licensed before that?
02:52:16 18 A I don't know.
02:52:19 19 Q Okay. Were you aware that the model youth access
02:52:22 20 laws supported by R.J. Reynolds prohibited the conduction
02:52:25 21 of surveys to determine retail compliance?
02:52:28 22 A No, sir.
02:52:31 23 MR. STEWART: Objection, form.
02:52:34 24 A Surveys?
02:52:37 25 Q (BY MR. MIKHAIL) State surveys to determine

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02:53:06 1 compliance with youth access laws by retailers.
02:53:10 2 A No, I'm not aware of that because I know that the
02:53:13 3 state had to report to the feds on compliance, but I
02:53:20 4 never -- I don't know what you mean by surveys exactly,
02:53:23 5 but --
02:53:23 6 Q Okay. Were you aware that the youth access bill
02:53:28 7 proposed and supported by R.J. Reynolds and the Tobacco
02:53:32 8 Institute did not provide for penalties for the owners of
02:53:42 9 the establishments, only the clerks who sell tobacco to
02:53:47 10 minors?
02:53:47 11 MR. STEWART: Objection, form.
02:53:49 12 A And let me kind of clarify something because I
02:53:52 13 don't sound like I'm a total dummy about this legislation,
02:53:56 14 but the -- in those areas, the oil marketers, grocer's
02:54:08 15 association were the most active participants and
02:54:12 16 proponents in that area. And it wasn't something that we
02:54:16 17 had strong feelings about one way or another, but they --
02:54:21 18 they were the ones who really hammered on that point -- on
02:54:25 19 those points about who gets fined and who gets fired and
02:54:29 20 that sort of thing.
02:54:30 21 Q (BY MR. MIKHAIL) But their position coincided
02:54:33 22 with R.J. Reynolds' position, didn't it?
02:54:35 23 A Not necessarily, sir, no, sir.
02:54:36 24 Q Well, was R.J. Reynolds in favor of all these
02:54:39 25 restrictions that I talked about that were -- did they not

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02:54:44 1 coincide with what the retailers wanted?
02:54:46 2 MR. CREMIN: I'm going to object to that question
02:54:48 3 because I don't know what you're talking about.
02:54:49 4 Q (BY MR. MIKHAIL) Well, as to the provisions that
02:54:51 5 we just discussed in the youth access bill.
02:54:53 6 A We've discussed about seven or eight different
02:54:57 7 provisions and the last thing we were talking about was
02:54:59 8 whether the owner or the clerk gets fined.
02:55:02 9 Q Okay. Let me go back. The industry supported
02:55:05 10 the passage of the 1994 Youth Prevention Access to Tobacco
02:55:10 11 Act?
02:55:12 12 A Yes, sir.
02:55:12 13 Q All right. And I'm asking you, did the retailers
02:55:21 14 support that bill, as well?
02:55:23 15 A Not in the beginning.
02:55:25 16 Q Okay. And what was their opposition to it?
02:55:28 17 A Their opposition was as it related to an owner
02:55:34 18 who may have -- we have a corporation here in Tulsa that
02:55:39 19 has 150 convenience stores, in that they were concerned
02:55:44 20 that the owner would be either arrested, fined, or have
02:55:52 21 some -- maybe have a chance of losing their license to sell
02:55:55 22 tobacco products because a clerk maybe, you know, sold
02:56:02 23 cigarettes to a relative or friend or high school buddy, or
02:56:06 24 whatever. And so they were very adamant about those things
02:56:11 25 and that wasn't an area that was, you know, of great

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1 concern to us, necessarily. We wanted to help them, if we
2 could, obviously, but that wasn't an area of very concern
3 to us.

4 Q And why did you want to help them?

5 A Because they are customers of our companies.

6 Q Well, if clerks sell tobacco to minors in
7 violation of the law, they can get fired, can't they?

8 A Absolutely. I mean, that's up to -- you know,
9 that's up to -- well, originally, it was up to the owner of
10 the store. I know, you know, at least one group, that's a
11 policy, the first time you do it, you're gone.

12 Q Right. The owner doesn't suffer any penalty for
13 his or her store selling tobacco to minors, do they?

14 A They can now.

15 Q They can now. I'm talking about under the bill
16 that the industry promoted in 1994.

17 A I believe that's correct. I'm --

18 Q Okay. Did the Tobacco Institute or R.J.
19 Reynolds, the two entities that you have lobbied for,
20 propose any legislation in Oklahoma dealing with youth
21 access, under age access to tobacco products, prior to
22 1994, 1993, '94, prior to the Synar Amendment requirements?

23 A I can't answer for the Tobacco Institute after
24 the spring of 1987 because I didn't work for them after
25 that.

02:59:41 1 A Which would, in my opinion, restrict at least
02:59:48 2 access to tobacco during the school day.

02:59:50 3 Q Okay. That was legislation that was introduced
02:59:52 4 by someone and then R.J. Reynolds attempted to have some
02:59:59 5 modifications or changes made to it, correct?

03:00:03 6 A We attempted to modify it, get it in a fashion
03:00:07 7 where they could pass it, yes, sir.

03:00:09 8 Q Right.

03:00:09 9 A But we didn't --

03:00:11 10 Q Until Synar, they didn't sponsor a bill --

03:00:18 11 A "They" being R.J. Reynolds?

03:00:20 12 Q Have a legislator from Oklahoma sponsor a youth
03:00:24 13 access to tobacco law in Oklahoma?

03:00:28 14 A They did not have me do that, I know.

03:00:31 15 Q All right. Did Ken Nance provide a legislator
03:00:35 16 with the ADAMHA proposed bill from the Tobacco Institute?

03:00:40 17 MR. STEWART: Object to form.

03:00:41 18 Q (BY MR. MIKHAIL) If he knows.

03:00:43 19 A I don't know.

03:00:44 20 MS. POTTER: Excuse me, we're at the end of the
03:00:46 21 videotape. This is the end of tape one, off the record at
03:00:49 22 03:00:50.

03:00:53 23 MR. CREMIN: Why don't we break for lunch now and
03:00:56 24 come back about 12:45.

03:58:26 25 (A lunch recess was had.)

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1 Q Okay. What about R.J. Reynolds?

2 A And the question was?

3 Q Prior to the 1994 --

4 A The ADAMHA?

5 Q Yeah, the ADAMHA act when Synar required it, did
6 R.J. Reynolds, to your knowledge, attempt to have passed in
7 Oklahoma a youth access law?

8 A Specifically, no.

9 Q Okay. And isn't it true that R.J. Reynolds only
10 supported passage of a youth access law in Oklahoma after
11 Synar required that a law be passed and one was going to be
12 passed; isn't that true?

13 A I don't think that's 100 percent true.

14 Q Correct me.

15 A In -- and access is a broad word, obviously, but
16 in about 1990, '91, somewhere in there, there was
17 legislation pending to allow schools to prohibit smoking on
18 the grounds of K through 12, kindergarten through the 12th
19 grade. That legislation was floundering because the
20 authors were -- one was a freshman House member and the
21 other one had been there a little longer but still didn't
22 know, and that -- it was just -- it wasn't making it, and I
23 know several of us worked on helping rewrite that in such a
24 way that it could pass.

25 Q Okay.

03:58:36 1 MS. POTTER: This begins tape two. Back on the
03:58:45 2 record at 03:58:46.

03:58:48 3 Q (BY MR. MIKHAIL) Mr. Matheson, I hope you had a
03:58:51 4 good lunch.

03:58:52 5 A Somebody else paid and so it was good.

03:58:55 6 Q Okay. Let's go back just for a moment to some
03:58:57 7 questions that I asked you or to an area that I asked you
03:59:00 8 questions about, about providing legislators with
03:59:05 9 information. You testified that you are required under the
03:59:09 10 law and that you do provide them with truthful information;
03:59:12 11 is that correct?

03:59:13 12 A Yes, sir.

03:59:13 13 Q Okay. When acting as a lobbyist for R.J.
03:59:17 14 Reynolds in the years in question and you provided
03:59:23 15 information to legislators on legislation pending that was
03:59:28 16 of interest to RJR, did you intend that the legislators
03:59:34 17 rely on the information that you were providing them on
03:59:37 18 behalf of R.J. Reynolds?

03:59:39 19 A I don't think that would be what I could say was
03:59:42 20 my intent. I view my job as to provide them information.
03:59:49 21 They have information from other sources, too, and that --
03:59:54 22 and I may be different than others in this, but I think
03:59:57 23 they need to look at all the information at their disposal
04:00:01 24 and make their decisions. Hopefully, I've given them good
04:00:04 25 enough information they will decide in my favor.

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<p>04:00:07 1 Q I understand that they get information from other 04:00:09 2 sources, but when you come to a legislator and you provide 04:00:12 3 him with information as a lobbyist for R.J. Reynolds, do 04:00:17 4 you intend that they act on that legislation in reliance on 04:00:23 5 the information that you give them? I mean, they have 04:00:26 6 other information, but I'm talking about do you intend that 04:00:29 7 they act on reliance in information, at least on part, on 04:00:32 8 the information that you've given them? 04:00:35 9 MR. STEWART: Objection, form. 04:00:36 10 A I expect them to, if they know me well enough, to 04:00:44 11 believe that what I have given them is factual and truthful 04:00:46 12 and to use that in the process of making their decision. I 04:00:57 13 never tell a legislator, look, you vote this way because of 04:01:01 14 this information. Maybe that's because I used to be one, 04:01:06 15 but I really think that my job is to give them the best 04:01:10 16 information I have and for them to take that and then make 04:01:13 17 their decision and make their votes based on the 04:01:16 18 information they have at their disposal. 04:01:18 19 Q (BY MR. MIKHAIL) Well, do you want them not to 04:01:20 20 rely on the information that you give them? 04:01:23 21 MR. STEWART: Objection, form. 04:01:24 22 A I want them to take that information as truthful 04:01:34 23 and factual information, and I hope that in that process, 04:01:39 24 they will then want to vote the way I would vote if I was 04:01:45 25 doing the voting.</p>	<p>04:02:43 1 Q And vice versa, the information you provide the 04:02:47 2 legislator on behalf of R.J. Reynolds, if the end goal is 04:02:50 3 to have the legislation defeated would be information that 04:02:53 4 would support defeat of the legislation? 04:02:56 5 A I think generally that's correct. I mean, it's 04:02:58 6 rare that you go in and give both sides, in effect. I 04:03:06 7 mean, you present your position as you understand it and 04:03:09 8 with the information you have at hand to them, and you may 04:03:14 9 not -- you may or may not have any information on the 04:03:17 10 other -- on the other position. 04:03:19 11 Q But if the end goal is to pass a piece of 04:03:24 12 legislation and the information you give them is 04:03:26 13 information in support, that would support passage of the 04:03:28 14 legislation, don't you want them then to rely on that 04:03:31 15 information in accomplishing the end goal and that is 04:03:34 16 passing the legislation? 04:03:35 17 MR. STEWART: Objection, form. 04:03:36 18 A It would be my hope -- 04:03:39 19 Q (BY MR. MIKHAIL) Wouldn't that be your intent? 04:03:42 20 MR. STEWART: Objection, form. 04:03:43 21 Q (BY MR. MIKHAIL) You may answer. 04:03:45 22 A Yes, I would intend that they accept that as 04:03:48 23 truthful, factual information and they use that in their 04:03:52 24 judgments of voting for or against the bill. And, 04:03:54 25 obviously, I'm there to get them -- in this case, if we're</p>
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<p>04:01:46 1 Q (BY MR. MIKHAIL) Well, you would want them to 04:01:48 2 act on the information that you give them, don't you? 04:01:51 3 MR. STEWART: Objection, form. 04:01:52 4 A I'm not sure I understand what you mean by act, 04:01:56 5 okay. I -- 04:01:57 6 Q (BY MR. MIKHAIL) All right. You come to a 04:02:00 7 legislator and you give the legislator information on 04:02:03 8 behalf of R.J. Reynolds that affects or that is in relation 04:02:06 9 to a piece of legislation that's pending and the 04:02:09 10 legislation is either going to get defeated or it's going 04:02:13 11 to get passed, correct? 04:02:14 12 A Generally, yes, sir. 04:02:15 13 Q Okay. And your client, in some instances, would 04:02:19 14 be in support or in favor of a particular piece of 04:02:21 15 legislation passing, correct? 04:02:23 16 A Yes. 04:02:23 17 Q And in some instances, your client would be 04:02:26 18 interested in the piece of legislation being defeated, 04:02:29 19 correct? 04:02:30 20 A Yes, sir. 04:02:30 21 Q And if you want some legislation to pass, the 04:02:32 22 information that you would be giving to the legislator from 04:02:36 23 R.J. Reynolds would be information that would be supportive 04:02:38 24 of the end goal, and that is that the legislation pass? 04:02:43 25 A Correct.</p>	<p>04:03:57 1 talking about something we're for, I'd want them to use it 04:04:01 2 to vote for the bill. 04:04:02 3 Q But you'd want them to be able to rely on the 04:04:05 4 information you give them, don't you? 04:04:05 5 A Absolutely. 04:04:06 6 Q I mean, your reputation is a good reputation, 04:04:09 7 isn't it? 04:04:09 8 A I think so. 04:04:10 9 Q And you give them truthful information? 04:04:12 10 A Yes. 04:04:13 11 Q So you would want them to rely on it? 04:04:15 12 A I'm having trouble with the word rely, I guess. 04:04:17 13 MR. CREMIN: Counsel, I don't think I understand 04:04:19 14 either. Rely is the hard time for me. 04:04:24 15 MR. MIKHAIL: You can make an objection as to 04:04:25 16 vagueness or ambiguity. I -- 04:04:26 17 MR. CREMIN: I object to the form of the 04:04:28 18 question. 04:04:28 19 MR. MIKHAIL: That's fine. 04:04:28 20 MR. CREMIN: That -- rely, to me, is vague. 04:04:28 21 MR. MIKHAIL: With all due respect, you can 04:04:30 22 object. 04:04:30 23 Q (BY MR. MIKHAIL) But you give them truthful 04:04:32 24 information, don't you? 04:04:32 25 A Yes, sir.</p>

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1 Q And it is either in support of or against certain
2 legislation?
3 A Yes, sir.
4 Q And you would want them to go one way or the
5 other, depending on what your client's position is, right?
6 A Yes, sir.
7 Q So you would want them to act in reliance on that
8 information, don't you?
9 A Again, and I may be a little bit different, I
10 think my job is to present them the best information I have
11 and to make the best arguments that I can make, but I
12 really feel very strongly personally that a legislator has
13 to take all of the information at their disposal in
14 consideration, and they vote at that time. I -- you know,
15 I never question a legislator after a vote is done.
16 Q No, I understand. I don't mean to interrupt your
17 answer, but go ahead.
18 A No, that's about it.
19 Q I understand that, but I mean, if the information
20 is in support of passage and that's what your client wants,
21 surely you'd want them to act on passing it, at least in
22 part, in reliance on the information you're given if it's
23 in support of the legislation?
24 A Let me say it this way, I would want them to vote
25 the position that I was advocating.

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1 Q All right. Let me ask you this question: When
2 you provide a legislator information, you either would
3 intend that they rely on it or that they not rely on it;
4 isn't that true?
5 MR. STEWART: Objection, form.
6 MR. CREMIN: Same objection.
7 A Again, I'm having a problem with rely, but I
8 would say that I would expect them to accept that as solid,
9 truthful information, and they know me, they know that I'm
10 going to -- I'm not going to give them something that's
11 false and if that's -- that is a part of their mental
12 processes that they use this information to make a decision
13 on the vote and I would want them to vote the way I would
14 vote if I were in their position.
15 Q (BY MR. MIKHAIL) In reliance on that
16 information, at least in part?
17 MR. STEWART: Objection, form.
18 A Well, I guess to me, you know, the definition --
19 again, rely to me may not be the dictionary definition, but
20 that's -- that is, say, taking this as the gospel and only
21 truth right here, what this man has given me; and so,
22 therefore, I'm going to rely on that to make my decision
23 because -- and I won't even look at anything else because I
24 can rely on this. So that's why I'm having trouble with
25 that.

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04:07:02 1 Q (BY MR. MIKHAIL) Well, the legislator can rely
04:07:04 2 on information from various sources, not just you?
04:07:06 3 A Correct.
04:07:07 4 Q And you certainly are not of the notion when you
04:07:09 5 go and give a legislator information from R.J. Reynolds
04:07:13 6 that that's all the information that the legislator is
04:07:14 7 going to have, do you?
04:07:17 8 A No.
04:07:18 9 Q I mean, there are other competing or opposing
04:07:21 10 forces that are going to be providing that legislator with
04:07:24 11 information, as well?
04:07:25 12 A That's correct.
04:07:25 13 Q And they give -- let's say the cancer society
04:07:28 14 gives information to the legislator and they would want the
04:07:31 15 legislator to vote the way they would want the legislator
04:07:34 16 to vote; otherwise, why would they give that information?
04:07:37 17 A This is what I said.
04:07:38 18 Q Right. So the reason you're giving the
04:07:40 19 information to the legislator is so that he would vote your
04:07:43 20 way?
04:07:43 21 A Yes.
04:07:43 22 Q So you would want them to rely on the information
04:07:46 23 in voting your way, wouldn't you?
04:07:46 24 MR. MacLAREN: Object to form, repetitive and
04:07:51 25 becoming argumentative.

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04:07:53 1 MR. MIKHAIL: You may -- objection is noted.
04:07:54 2 A I'm not sure I can go beyond what I've said
04:07:59 3 because I have, at least in my own mind, a definition of
04:08:06 4 rely or reliance. And, as I said, I truly expect
04:08:12 5 legislators to look at both sides of an issue and make
04:08:15 6 their decision based on the information they have available
04:08:17 7 to them.
04:08:18 8 Q (BY MR. MIKHAIL) Okay. I don't want to badger
04:08:20 9 you, I promise you that.
04:08:21 10 A No, I understand. I understand, and I don't want
04:08:22 11 to evade the question, but I just --
04:08:24 12 Q Let me ask you this: When you give them the
04:08:26 13 information that is in support of the position your client
04:08:29 14 is taking or if it's against legislation; in other words,
04:08:34 15 it's to defeat legislation, when they act on that piece of
04:08:40 16 legislation, you want them to act on that legislation, in
04:08:44 17 part, based on the information that you give them?
04:08:46 18 A Yes.
04:08:47 19 Q Okay. And the information you give them is
04:08:49 20 truthful?
04:08:50 21 A Yes.
04:08:50 22 Q And if it's truthful, they don't have any reason
04:08:53 23 not to accept it as truthful from you, do they?
04:08:56 24 A No, sir.
04:08:57 25 Q Okay. Did you discuss at any time prior to the

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04:09:01 1 deposition, prior to my questioning to you now with your
04:09:05 2 counsel or any counsel sitting here or any counsel for the
04:09:08 3 defendants the use of or term rely or reliance?
04:09:14 4 A No.
04:09:15 5 MR. CREMIN: I don't want you to inquire what we
04:09:17 6 discussed. That's -- I think that's invading --
04:09:18 7 MR. MIKHAIL: I'm not doing that.
04:09:19 8 MR. CREMIN: Yes. You just asked him if we
04:09:21 9 discussed whether or not he should answer questions
04:09:24 10 regarding rely.
04:09:25 11 MR. MIKHAIL: Well, that's a fair question. If a
04:09:27 12 witness is having trouble with a word, Pat --
04:09:31 13 MR. CREMIN: You can't ask him what we
04:09:32 14 discussed.
04:09:33 15 MR. MIKHAIL: I'm not asking what you discussed,
04:09:35 16 I'm asking specifically if he discussed that.
04:09:37 17 MR. CREMIN: I'm not going to let him answer.
04:09:39 18 MR. MIKHAIL: Well, I'm going to put it on the
04:09:40 19 record.
04:09:41 20 MR. CREMIN: That's fine.
04:09:41 21 Q (BY MR. MIKHAIL) Did your counsel or any other
04:09:43 22 counsel discuss with you prior to your testimony use of the
04:09:49 23 word rely or reliance in answering questions?
04:09:51 24 A Absolutely not, sir.
04:09:52 25 Q Okay. That's fine.

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04:09:53 1 A That's my own hangup.
04:09:59 2 Q Okay. I'll accept that.
04:10:02 3 There was one document here, Mr. Matheson, in one
04:10:07 4 of the documents that you furnished, I believe, if you'll
04:10:10 5 just give me a moment, I can find it.
04:10:11 6 A Uh-huh.
04:10:12 7 Q Well, let me just tell you while I'm looking it.
04:10:28 8 And I believe it was authored by you and you'll correct me
04:10:30 9 and I think the document will speak for itself, but it
04:10:33 10 starts out by you saying in the document that the forces of
04:10:37 11 evil are at it again or they're back. Do you recall
04:10:39 12 something in a document like that?
04:10:41 13 A I have -- I'm absolutely certain I probably said
04:10:45 14 that at one time or another.
04:10:46 15 Q Okay.
04:10:47 16 A That is my style, I guess.
04:10:50 17 Q Just bear with me for a moment, if you would.
04:10:52 18 A Sure.
04:10:53 19 Q You also often sign your letters peace. What is
04:11:37 20 that?
04:11:37 21 A Peace and shalom, and I have used peace in the
04:11:43 22 congo.
04:11:46 23 MR. CREMIN: Should have brought a paralegal.
04:12:02 24 MR. MIKHAIL: It's one of those things you
04:12:04 25 remember seeing but don't remember -- almost done.

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04:12:17 1 MR. CREMIN: There's the smoking gun, it's not
04:12:19 2 even there and another one, several pages.
04:12:23 3 MR. MIKHAIL: Actually, maybe it's one of the
04:12:25 4 exhibits.
04:12:25 5 MR. CREMIN: It probably is since you have
04:12:28 6 numerous invisible documents.
04:12:31 7 MR. MIKHAIL: That must be what happened to it.
04:12:33 8 It's one of those exhibits, it's right on the top. You see
04:12:36 9 it. That's what it is. There are not that many exhibits.
04:13:01 10 Find it, Jerry.
04:13:02 11 MR. EVANS: No, sorry.
04:13:04 12 MR. MIKHAIL: I don't see it here. I apologize,
04:13:07 13 I'll look for it during break. Excuse me, Mr. Matheson,
04:13:10 14 I'm sorry, these things happen.
04:13:12 15 THE WITNESS: No problem.
04:13:13 16 Q (BY MR. MIKHAIL) Let's go back to the issue of
04:13:15 17 taxation. Has R.J. Reynolds consistently in the time
04:13:18 18 period in question and in the time period that you have
04:13:21 19 acted as a lobbyist for them opposed tax increases on
04:13:26 20 cigarettes?
04:13:26 21 A Yes, sir.
04:13:27 22 Q And did their opposition to tax increases on
04:13:32 23 cigarettes depend on what the increase was to be used for
04:13:36 24 or were they consistently opposed to any tax increases, no
04:13:40 25 matter what?

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04:13:40 1 A Consistently opposed to tax increases, period.
04:13:43 2 Q Okay. Even if it was, let's say, for earmarking
04:13:46 3 it for cancer research?
04:13:50 4 A I don't recall any legislation like that, but
04:13:53 5 they would have been opposed to it. If it's a tax
04:13:56 6 increase, is a tax increase, is a tax increase, and they
04:13:58 7 ain't for it.
04:13:58 8 Q If it was for earmarking and improving health
04:14:01 9 care services in Oklahoma, they would have opposed it?
04:14:05 10 MR. STEWART: Object to the form.
04:14:06 11 MR. CREMIN: Are you asking him whether they did
04:14:08 12 or just speculate they might?
04:14:11 13 Q (BY MR. MIKHAIL) First, did they oppose any tax
04:14:14 14 increase?
04:14:14 15 A Yes.
04:14:15 16 Q Okay. From your experience in working as their
04:14:18 17 lobbyist, would they oppose any tax increase, from your
04:14:22 18 experience; was that their position?
04:14:26 19 A The position has been in opposition to tax
04:14:30 20 increases. There's never, to my knowledge, been any
04:14:34 21 specific information on if it was this area or this area,
04:14:39 22 we might change our mind, but, believe me, they don't tell
04:14:43 23 me everything they're thinking of in Winston-Salem. So,
04:14:46 24 you know, I don't know that if something came along that
04:14:49 25 was for a specific purpose that they might be, you know,

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1 less opposed or not opposed, I just know that in anything
2 that has been proposed to date that I'm aware of, they have
3 opposed them.

4 Q Okay. You talked just a little bit about tort
5 reform this morning.

6 A Uh-huh.

7 Q And I don't want to plow the same field again but
8 just so that my mind is clear on this, did you ever work to
9 have laws passed or defeated that dealt with tort reform on
10 behalf of R.J. Reynolds in Oklahoma?

11 A No, sir.

12 Q One of the Tobacco Institute documents that was
13 produced to us makes reference to Oklahoma having increased
14 its cigarette taxes from 13 to 18 cents per pack in 1979.
15 And it says it was the first increase in 11 years. Has the
16 increase -- has cigarette taxes been increased since 1979,
17 since this increase from 13 to 18 cents?

18 MR. STEWART: Objection, form.

19 A There was a tax increase in 1987 that I'm aware
20 of that was, I believe -- I say '87, I'm going to say I'm
21 not 100 percent sure it's '97 (sic). I believe it was
22 1987, and it was a nickel a pack, in effect, or they do it
23 by mills. So if you have a 25 pack cigarettes or
24 something, they get every one of them, but it turned out to
25 be the equivalent of a nickel a pack on a 20 pack of

04:18:14 1 and I'm reading, "One bill to remove preemption on cities
04:18:18 2 passing stronger ordinances," and then you state in the
04:18:21 3 letter, "We have at this point, this taken," I think this
04:18:24 4 is a typo but, "We have at this point this taken care of in
04:18:29 5 committee." What did you mean by taken care of something
04:18:31 6 in committee, what does that mean?

04:18:34 7 A When was that?

04:18:35 8 Q You're welcome to look at it. It's February 9th,
04:18:40 9 1991.

04:18:40 10 A Okay.

04:18:42 11 MR. STEWART: What's the document number?

04:18:44 12 MR. CREMIN: RJ 0016 is the exact page. Looks to
04:18:48 13 me it began three pages earlier, so it would have been
04:18:52 14 probably 14.

04:18:53 15 A And I don't recall that specific instance, but
04:18:58 16 what I would normally mean would be one of two things, that
04:19:03 17 we had counted the votes among the committee members and
04:19:09 18 knew that there were not enough votes in that committee to
04:19:11 19 pass that bill. That would generally be the case.
04:19:15 20 Occasionally, a committee chair will decide because of
04:19:20 21 either the press of legislation or for personal reasons, or
04:19:24 22 whatever, that they don't want to hear a particular piece
04:19:27 23 of legislation. So by saying it's taken care of means it's
04:19:32 24 not going to be heard or there are enough votes to defeat
04:19:35 25 it.

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1 cigarettes. And that raised -- at that time, raised the
2 tax to 23 cents a pack in Oklahoma.

3 Q (BY MR. MIKHAIL) Is that what it is now?

4 A Yes, sir.

5 Q Okay. From your recollection, was that, that
6 legislation for the tax increase, the nickel that you're
7 talking about, was that during your tenure as a lobbyist
8 for RJR?

9 A No, sir.

10 Q Was it during your tenure as a lobbyist for the
11 Tobacco Institute?

12 A It was, but I was not involved in that issue.

13 Q Okay. One of the documents that you produced in
14 response to the subpoena was a memo to a Joe Murray, III
15 that we talked about earlier.

16 A Uh-huh.

17 MR. MIKHAIL: It was dated February the 9th,
18 1991. I'm not making that as an exhibit, Pat, because I'm
19 just going to refer to one sentence and ask him a question
20 about it. You're welcome to look at it if you'd like.

21 MR. CREMIN: That's all right.

22 Q (BY MR. MIKHAIL) I just highlighted a section
23 here I'd wanted to ask you about. You're reporting to
24 Mr. Murray in this document about various restrictions or
25 bills dealing with restrictions and you make reference to,

04:19:35 1 Q (BY MR. MIKHAIL) Okay. But you don't recall
04:19:41 2 specifically this reference?

04:19:42 3 A I really don't. There's been a lot of it in the
04:19:45 4 last 10 years.

04:19:47 5 Q Is Ken Nance a good effective lobbyist?

04:19:51 6 A Yeah, I think he's one of the best.

04:19:55 7 Q Do you consider yourself an effective lobbyist
04:19:57 8 for RJR?

04:20:01 9 A I guess -- I don't want to get in on the
04:20:06 10 semantics again on the definition of effective. I think
04:20:11 11 I've been effective simply because companies with
04:20:13 12 lobbyists, you don't stay with a company almost 11 years if
04:20:17 13 you haven't been effective.

04:20:19 14 Q So you believe that you have been able to
04:20:21 15 accomplish what RJR sought to have accomplished using your
04:20:27 16 services?

04:20:28 17 A To a large extent, yes. Not always, but to a
04:20:31 18 large extent.

04:20:31 19 Q You win some, you lose some, I guess, but
04:20:34 20 generally you've been successful?

04:20:35 21 A I would think so, yes, sir.

04:20:37 22 Q All right. Would you characterize the tobacco
04:20:37 23 industry's lobbyists in Oklahoma, of which you are one
04:21:06 24 since you are an RJR lobbyist, a successful lobbying team
04:21:12 25 for the industry?

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04:21:14 1 A Yes.

04:21:19 2 Q Can you give me some examples of some of the

04:21:23 3 losses that you -- that come to mind today?

04:21:27 4 A Losses in --

04:21:29 5 Q You said you win some, you lose some.

04:21:31 6 MR. CREMIN: No, you said that, he didn't say

04:21:33 7 that.

04:21:33 8 MR. MIKHAIL: He agreed with it, though.

04:21:35 9 MR. CREMIN: He may not agreed with it. You left

04:21:39 10 out rainouts.

04:21:41 11 MR. MIKHAIL: You want to get out of here at

04:21:44 12 three, Pat?

04:21:45 13 THE WITNESS: I normally say that, you win some,

04:21:47 14 you lose some, some get rained out.

04:21:50 15 Q (BY MR. MIKHAIL) What are the losses?

04:21:58 16 A Well, because there's a tendency throughout the

04:22:02 17 legislative process to compromise as you go along, usually

04:22:11 18 a piece of legislation that passes is a product of the

04:22:15 19 compromises that have occurred from the time it's entered

04:22:18 20 into, heard in committee, heard on the floor, goes to the

04:22:22 21 next house and the floor, conference committee, and things

04:22:26 22 like that. So it's rare that a piece of legislation passes

04:22:31 23 that isn't a series of compromises, whether it's related to

04:22:36 24 the tobacco industry or anybody else. Yeah, there are

04:22:38 25 things that get rammed through now and then in some areas,

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04:22:43 1 if it's a leadership program or something, but I can't

04:22:47 2 think of anything right now that I would consider a

04:22:50 3 specific loss.

04:22:52 4 Q No major loss comes to mind?

04:22:56 5 A Not right now.

04:22:58 6 Q Mr. Matheson, going back to something we talked

04:23:00 7 about just before we broke for lunch about the preemption

04:23:04 8 provisions in youth access bills. At the time that you

04:23:07 9 were lobbying in favor of the youth access bill in 1994,

04:23:14 10 did R.J. Reynolds provide you with any studies and research

04:23:20 11 that had been done in various parts of the country about

04:23:23 12 the effectiveness of the various provisions dealing with

04:23:27 13 youth enforcement in that proposed legislation?

04:23:33 14 A I don't think so. I don't remember anything

04:23:36 15 specific.

04:23:37 16 Q Were you aware that various studies had been

04:23:40 17 conducted as to the effectiveness of various provisions

04:23:42 18 that were being proposed that showed that enforcement would

04:23:47 19 be less, there would be less enforcement, and youth would

04:23:53 20 have more access to tobacco as a result of many of those

04:23:56 21 provisions?

04:23:56 22 A No, sir, I was not.

04:23:57 23 Q You're not aware of that?

04:23:58 24 A No, sir.

04:24:00 25 Q Is that -- okay. We may be done sooner.

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04:24:41 1 MR. CREMIN: I was just going to say, didn't you

04:24:43 2 love the looks of a damn spiral binder closing. Strike

04:24:48 3 damn, Roz.

04:24:49 4 MR. MIKHAIL: The way the answer goes, it

04:24:51 5 dispenses with a whole bunch of the information.

04:24:54 6 MR. CREMIN: I understand, I've done a few of

04:24:56 7 these.

04:24:56 8 MR. MIKHAIL: You have?

04:24:57 9 MR. CREMIN: Yeah. I know it doesn't look like

04:24:59 10 it, but I have.

04:25:00 11 MR. MIKHAIL: I can't tell. That doesn't need to

04:25:04 12 be on the record.

04:25:05 13 MR. CREMIN: Who's our next caller, Roz?

04:25:09 14 THE WITNESS: Better not leave a bunch of my

04:25:12 15 stuff off the record.

04:25:38 16 MR. MIKHAIL: I had eight exhibits marked. Based

04:25:40 17 on some of the questions and the answers, I'm probably not

04:25:43 18 going to use some of these. My problem is if I am going to

04:25:47 19 use one or two of these, I'll just have to change the

04:25:50 20 number. They haven't been -- I marked them myself. Is

04:25:53 21 that all right with you gentlemen?

04:25:55 22 MR. CREMIN: I don't care.

04:25:56 23 MR. MIKHAIL: I'll just like change -- if it's

04:25:57 24 three, I'll change it to one.

04:25:58 25 MR. CREMIN: You can do that or you can just have

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04:26:00 1 three and five, I don't care.

04:26:02 2 MR. MIKHAIL: I'd rather not, it would just be

04:26:03 3 easier. I just premarked these myself so it will make it

04:26:07 4 quicker for everybody.

04:26:08 5 MR. STEWART: We'll have legal assistants calling

04:26:10 6 looking for number two.

04:26:12 7 MR. CREMIN: My paralegal marks them. I'm not

04:26:15 8 allowed to touch them. I'm not allowed to do much of

04:26:17 9 anything. Now that we're off the record and he's

04:26:31 10 searching, a friend of mine created Frazier. Ken Levine,

04:26:33 11 he did M*A*S*H, he did Cheers. He also does major league

04:26:38 12 broadcasting.

04:26:40 13 MR. RIGGS: Is he from around here somewhere?

04:26:42 14 MR. CREMIN: No, my brother -- I got a job years

04:26:44 15 ago for my brother with the Seattle Mariners. I represent

04:26:47 16 their broadcast crew.

04:26:47 17 THE WITNESS: We're not off the record.

04:26:47 18 MR. CREMIN: Yes, we are. And Levine -- I mean,

04:26:49 19 it's taping but -- and Levine, in addition to writing

04:26:52 20 television situation comedy, does baseball broadcasting.

04:26:56 21 MR. RIGGS: I'll be darn.

04:26:58 22 MR. CREMIN: Very clever. Let me bore you with

04:27:00 23 one story.

04:27:08 24 MS. POTTER: Excuse me, let me go off the record

04:27:10 25 at 04:27:47.

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1 (A recess was had.)
 2 MS. POTTER: Back on the record at 04:28:01.
 3 Q (BY MR. MIKHAIL) I now know why I couldn't find
 4 it, it's not an exhibit, it's one of those other documents
 5 I just want to ask you a question about rather than make
 6 it -- clutter the record with it.
 7 One of the documents that you furnished to us in
 8 response to the subpoena was apparently transcribed notes
 9 of yours from an RJR meeting. It's SOO/RJR.3608.
 10 MR. CREMIN: Except that's SOO, State of
 11 Oklahoma, not OO.
 12 MR. MIKHAIL: Oh, it is? Sorry about that.
 13 MR. CREMIN: State of Oklahoma, R.J. Reynolds.
 14 THE WITNESS: I thought it was SOO.
 15 MR. STEWART: So did RJR.
 16 Q (BY MR. MIKHAIL) Okay. These are notes of a
 17 meeting that you apparently participated in and on the last
 18 page, page three, it refers to dos and don'ts. The first
 19 one, it says, "Know and understand basic industry
 20 positions, i.e. it is not scientifically proven that
 21 smoking cigarettes causes disease. RJR has no other
 22 position public or private." And this is a document dated
 23 12-11-89. Actually, 12-11 and 12, so it's December 11th
 24 and 12th of 1989. Do you recall this meeting?
 25 A If I looked at it, I might be able to.

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1 Q It makes reference to certain individuals at the
 2 meeting.
 3 A Yeah. I don't know where this meeting was. I
 4 don't remember where this meeting was.
 5 Q It's nine years ago, I understand that, but you
 6 don't recall it? Does this refresh your memory?
 7 A Well, it says, "transcribed notes" and I'm trying
 8 to look like -- if this is something I transcribed. Is
 9 this something I provided?
 10 Q Yes, sir.
 11 A Okay. I guess I transcribed it then. Which
 12 meaning that I took my rough notes at the meeting and when
 13 I got back to town, at some time within a week or two, I
 14 sat down and, you know, put it in my -- in this case, in
 15 the computer the notes that I had taken from that meeting.
 16 Q Okay.
 17 A And this would be the type of meeting where they
 18 would go through a variety of subjects.
 19 Q Okay. What I wanted to ask you about is this
 20 reference to dos and don'ts. Your notes say, "Know and
 21 understand basic industry positions i.e., it is not
 22 scientifically proven that smoking cigarettes causes
 23 disease. RJR has no other position public or private." Do
 24 I take that to mean that that was something that was told
 25 you at this meeting?

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04:30:49 1 A Yes, sir.
 04:30:49 2 Q Okay. And this information here, "i.e., it is
 04:30:54 3 not scientifically proven that smoking cigarettes causes
 04:30:57 4 disease," did you convey this message to legislators in
 04:31:01 5 Oklahoma?
 04:31:02 6 A No, not to my knowledge because that -- I look at
 04:31:08 7 that as an internal document that they would have -- that's
 04:31:14 8 a statement or a printed -- something maybe was printed or
 04:31:18 9 a statement that was made at the meeting and I took it down
 04:31:21 10 and -- but I've never stated that position anywhere that I
 04:31:27 11 could recall.
 04:31:28 12 Q Okay. The second one says, "Avoid discussion of
 04:31:34 13 RJR positions/info with opposition." Does that jog your
 04:31:40 14 memory of what that means?
 04:31:41 15 A Not really, but I would -- you know, all I could
 04:31:46 16 do is speculate what it means. I don't really know other
 04:31:51 17 than, you know, you don't go tell the other side, you know,
 04:31:55 18 what your positions are in certain ways. I mean, in any
 04:32:00 19 lobbying or any other endeavor, you're not going to tell
 04:32:05 20 Mr. Cremin what you're going to try to do next.
 04:32:06 21 Q I understand, but it says here, "Avoid discussion
 04:32:08 22 of RJR positions/info with opposition." Is the opposition
 04:32:14 23 we're referring to people that are attempting to influence
 04:32:17 24 the legislators the other way; in other words, contrary to
 04:32:20 25 what R.J. Reynolds wants?

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04:32:22 1 A That would be how I would believe it.
 04:32:24 2 Q Okay. And what would be the reason for not
 04:32:26 3 discussing the positions and the information of RJR with
 04:32:30 4 the opposition?
 04:32:33 5 A Well, I think, again, it's just like whether I
 04:32:37 6 was lobbying for R.J. Reynolds or the blessed sisters of
 04:32:41 7 the poor, that I wouldn't want my opponents to know what
 04:32:46 8 actions I might take based on what information I have or
 04:32:51 9 what particular positions we have.
 04:32:55 10 Q Okay. This information is given to a legislator,
 04:32:58 11 it's made public to the legislator; in other words, it's
 04:33:01 12 not something that's secret, is it?
 04:33:05 13 A No, not necessarily. I mean, if you're talking
 04:33:08 14 about strategy of the way you're going to approach trying
 04:33:10 15 to get votes for or against a piece of legislation, there
 04:33:14 16 are a variety of parliamentary things that can be done
 04:33:20 17 within the legislative process. You wouldn't want the
 04:33:24 18 other side to know how you're going to go about, in effect,
 04:33:30 19 prosecuting your case. And that applies to almost every
 04:33:33 20 client. I mean, I can, you know, cite some specific
 04:33:40 21 examples, you know, with other clients anyway where you
 04:33:43 22 absolutely don't want the other side to know what you're
 04:33:45 23 going to do because it's a surprise or because you're going
 04:33:49 24 to use a certain rule or something to be able to get
 04:33:54 25 something done.

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<p>04:33:55 1 Q Is the opposition that you're referring to here</p> <p>04:34:00 2 public health officials, for instance?</p> <p>04:34:03 3 A What's the date on that document, please?</p> <p>04:34:04 4 Q December 11 and 12, 1989.</p> <p>04:34:07 5 A Okay. That's the same one. At that time, we</p> <p>04:34:14 6 would be talking about there was a group wandering around</p> <p>04:34:17 7 at that time called GROSS, Get Rid of Secondhand Smoke,</p> <p>04:34:23 8 that was really two brothers and whoever else they could</p> <p>04:34:27 9 sign up. They made some radio appearances, they appeared</p> <p>04:34:31 10 at the legislature and give away Twinkies wrapped in blue</p> <p>04:34:37 11 ribbon. And there was -- there was another group, you</p> <p>04:34:43 12 know, Save Us from Secondhand Smoke, or something like that</p> <p>04:34:47 13 at the time. I don't believe -- the health department has</p> <p>04:34:53 14 people that are -- who work on smoking programs and promote</p> <p>04:34:59 15 smoking prevention programs, but they were not active in</p> <p>04:35:01 16 the legislature at that time. There may have been some</p> <p>04:35:06 17 people from the lung association at that time around. So</p> <p>04:35:12 18 those were sort of the opposition groups that I recall from</p> <p>04:35:15 19 that period of time.</p> <p>04:35:15 20 Q Some of the voluntary health groups?</p> <p>04:35:17 21 A Yes.</p> <p>04:35:18 22 Q When I say voluntary, meaning not public</p> <p>04:35:21 23 officials?</p> <p>04:35:21 24 A Yes, and nonhealth groups, just sort of ad hoc</p> <p>04:35:24 25 organizations who have taken -- who decided to take on the</p>	<p>04:37:07 1 remember.</p> <p>04:37:08 2 Q Okay. What happened with that piece of</p> <p>04:37:09 3 legislation?</p> <p>04:37:10 4 A It passed with no funding source. And I believe</p> <p>04:37:16 5 there was a section of the bill that said any funds from</p> <p>04:37:21 6 state, federal, donations, et cetera, sources that, you</p> <p>04:37:26 7 know, will be -- it was what's known as a revolving fund in</p> <p>04:37:31 8 the system, in the legislative system, in the state finance</p> <p>04:37:35 9 system, and that any funds that they could get, whether</p> <p>04:37:37 10 they could get them from the feds or the state as an</p> <p>04:37:41 11 appropriations or from private donations could go into that</p> <p>04:37:45 12 and be used for breast cancer research.</p> <p>04:37:47 13 Q All right. Can you think of any other</p> <p>04:37:49 14 legislation that you, R.J. Reynolds, were on the same side</p> <p>04:37:55 15 of the public health community?</p> <p>04:37:58 16 A Well, public health community is pretty broad.</p> <p>04:38:01 17 Q Public health meaning like the health department</p> <p>04:38:04 18 and public health officials, not independent groups like</p> <p>04:38:06 19 the heart association or the American Cancer Association.</p> <p>04:38:08 20 A That we were all on the same side on. I think</p> <p>04:38:17 21 when -- well, I don't know how to do this, but I think it's</p> <p>04:38:24 22 past the scope of our August 1996 date.</p> <p>04:38:28 23 Q It's past 1996?</p> <p>04:38:31 24 A Yeah. So I don't --</p> <p>04:38:33 25 Q Before 1996, can you think of any --</p>
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<p>04:35:27 1 issue.</p> <p>04:35:27 2 Q Mr. Matheson, in the years in question that we're</p> <p>04:35:30 3 talking about in your capacity as a lobbyist for RJR, can</p> <p>04:35:34 4 you recall an instance when you, meaning RJR, was on the</p> <p>04:35:37 5 same side of a piece of legislation as the public health</p> <p>04:35:42 6 community?</p> <p>04:35:45 7 A Yes.</p> <p>04:35:45 8 Q Can you tell me which one those are?</p> <p>04:35:49 9 A There was a -- and it's been about five or six</p> <p>04:35:54 10 years ago, there was a -- there was a bill by a Tulsa</p> <p>04:36:00 11 representative, I believe, to provide funding for breast</p> <p>04:36:09 12 cancer research in Oklahoma. And we had agreed at that</p> <p>04:36:17 13 time, "we" meaning the people in the tobacco community, to</p> <p>04:36:23 14 support that legislation.</p> <p>04:36:26 15 Q Was it a bill introduced to have funds earmarked</p> <p>04:36:31 16 for that? Explain exactly what it was.</p> <p>04:36:34 17 A Well, it was -- the author at the time she</p> <p>04:36:37 18 introduced it says, "I don't have a funding source yet and</p> <p>04:36:40 19 I want to find a funding source throughout this process."</p> <p>04:36:45 20 And we involved ourselves enough that we would support it</p> <p>04:36:50 21 and, frankly, if there was no tobacco tax on it.</p> <p>04:36:54 22 Q Okay. Did the piece of legislation designate</p> <p>04:36:57 23 part of the funding to be increases in tobacco taxes?</p> <p>04:37:00 24 A No, never did. Not from its introduction, nor</p> <p>04:37:05 25 was an amendment ever offered to do that, as far as I</p>	<p>04:38:36 1 A No, sir, not really.</p> <p>04:38:39 2 MR. MIKHAIL: Okay. Can we take a maybe three</p> <p>04:38:49 3 minute break and maybe we can wrap up. I just want to talk</p> <p>04:38:53 4 to my co-counsel.</p> <p>04:38:54 5 MR. CREMIN: Yeah.</p> <p>04:38:56 6 MS. POTTER: Off the record at 04:38:54.</p> <p>04:39:02 7 (A recess was had.)</p> <p>04:52:33 8 MS. POTTER: Back on the record at 04:52:36.</p> <p>04:52:38 9 Q (BY MR. MIKHAIL) Okay. Mr. Matheson, just a</p> <p>04:52:40 10 couple more minutes, if you bear with me.</p> <p>04:52:43 11 A Okay.</p> <p>04:52:44 12 Q One of the documents that you produced to us was</p> <p>04:52:46 13 a copy of a -- an editorial or article that was published</p> <p>04:52:52 14 in the Tulsa Tribune on March 18, 1987 entitled, Smoking</p> <p>04:53:00 15 Ban is Beyond Common Sense, and it says by Charles "Mike"</p> <p>04:53:04 16 Nobles, N-o-b-l-e-s. And attached to it was a document</p> <p>04:53:10 17 that you also produced to us in response to the subpoena</p> <p>04:53:15 18 that is marked TIOK, that's Tobacco Institute Oklahoma, I</p> <p>04:53:22 19 guess.</p> <p>04:53:24 20 A Probably not, but --</p> <p>04:53:25 21 Q 0018759. Maybe it was produced by TI.</p> <p>04:53:30 22 MR. CREMIN: That's produced by somebody else.</p> <p>04:53:32 23 THE WITNESS: No, I produced that. I didn't</p> <p>04:53:33 24 produce that?</p> <p>04:53:34 25 MR. CREMIN: Not that document, maybe another</p>

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1 copy.

2 MR. MIKHAIL: Produced by TI.

3 MR. STEWART: At least that copy was, yeah.

4 MR. MIKHAIL: Scott.

5 MR. MacLAREN: TIOK is a TI --

6 MR. MIKHAIL: Oklahoma?

7 MR. MacLAREN: Yeah.

8 Q (BY MR. MIKHAIL) In any event, it's a letter
9 from Karen Matheson to Stan, I'm assuming it's Stan Boman,
10 but I don't want to presume anything. But it says, "More
11 from Tulsa", and it attaches the point of view article.
12 And it says, "The point of view column was actually written
13 by Mandell and submitted by a friend of ours." Is that
14 your recollection of that editorial -- or not editorial but
15 point of view?

16 A March 23rd, 1987, depending on what that date
17 was, I was more than likely in Oklahoma City in session
18 with the legislature, and it's signed by my -- or at least
19 my wife's name is typed on here as our letterhead, so I
20 presume it came from our office. But, yes, I do
21 specifically remember this.

22 The actual fact is that Mike, who's an old friend
23 and I've done a lot of work -- did a lot of work for him
24 when he was still the president and the secretary-treasurer
25 of the United Food and Commercial Workers, and he put out

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1 a, basically, wrote an outline of his thoughts on this
2 issue and then I, quote, fleshed it out and put it in a
3 more readable form and went back to him. He finished it
4 and he submitted it.

5 Q Okay. The original thoughts outlined or written
6 out was by Mr. -- or were by Mr. Nobles himself?

7 A Absolutely.

8 Q That's where they originated?

9 A Absolutely.

10 Q And did he bring it to you?

11 A You know, I really don't -- I don't remember. We
12 had talked about it. As I said, I did a lot of work for
13 Mike. Mike is an unusual and very bright person and he's
14 now writing book reviews in Colorado or something, but he
15 could get, you know, the really good forceful basic
16 thoughts down, and he did and does have very strong
17 opinions on smoking issues. And I don't recall whether I
18 asked him about it or whether he -- we were talking about
19 it and he volunteered it. I really -- I mean, it's
20 possible I asked him, it's possible he volunteered, and I
21 don't recall which.

22 Q Okay. The reference here in this letter says
23 that, "Was actually written by Mandell and submitted by a
24 friend of ours." You were not actually authoring it and
25 having someone else publish it so that it would not appear

04:56:09 1 that a tobacco industry lobbyist was behind the piece, were
04:56:13 2 you?

04:56:14 3 A No, no. Because -- and, again, Mike had very
04:56:16 4 strong and does have very strong opinions on this. I'm
04:56:19 5 sure at some point we were talking about it, and whether I
04:56:22 6 suggested it or he suggested it, I don't remember. But in
04:56:25 7 my normal workings with him, I've written speeches for him,
04:56:29 8 newspaper articles for him. He outlines his thoughts and
04:56:33 9 basic concepts he wants in it and then I've gone in and
04:56:36 10 fleshed it out a little bit and he goes back through and
04:56:39 11 puts his -- makes sure he has his sort of imprimature on it
04:56:45 12 with his final thoughts on it and then goes from there.

04:56:47 13 Q Do you recall -- I mean, it's been a while, but
04:56:50 14 do you recall now if there was any reason why you didn't
04:56:52 15 put your name as a co-author of the article?

04:56:53 16 A Well, that wouldn't be normal, I mean, because in
04:56:58 17 those days I did a lot of PR work for them and I guess I
04:57:02 18 was sort of a ghost writer for him on a number of
04:57:05 19 occasions.

04:57:05 20 Q Okay. Do you know if the newspaper in which it
04:57:08 21 was published, the Tulsa Tribune, was informed that you had
04:57:13 22 participated in the preparation of this article?

04:57:17 23 A I don't know.

04:57:17 24 Q You don't remember?

04:57:18 25 A No. I just -- I don't know. I mean, I --

04:57:22 1 Q You don't know?

04:57:22 2 A No.

04:57:24 3 Q All right. Fair enough. I would just like to
04:57:26 4 hand you these exhibits after all. I'm not going to go
04:57:31 5 over the information here. I want to hand you what I have
04:57:33 6 marked as Matheson 1, and your counsel have copies of it,
04:57:36 7 and ask you -- I don't want to stand over your shoulder,
04:57:39 8 but I want to take a look. If you'll just take a look at
04:57:43 9 the document, both pages of it, for a moment and tell me if
04:57:51 10 you authored this document that's marked Matheson 1. It
04:58:01 11 was, again, a document produced to us in response to the
04:58:03 12 subpoena.

04:58:03 13 A This -- this certainly is something I wrote, I'm
04:58:35 14 relatively certain, yeah.

04:58:36 15 Q Okay. Is this a true -- what I have marked as
04:58:39 16 Matheson 1 a true and correct copy of the document in your
04:58:42 17 file?

04:58:44 18 A Well, I didn't -- I don't think I produced this
04:58:47 19 document. I may have, and I don't know. Is there any way
04:58:53 20 we can tell?

04:58:53 21 Q The numbers would tell.

04:58:56 22 MR. CREMIN: Yeah.

04:58:56 23 A I did produce this, okay. So, yeah, it's
04:58:59 24 whatever came out of my files.

04:59:00 25 Q (BY MR. MIKHAIL) Okay. The original wouldn't be

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04:59:02 1 in your file because it appears that it was addressed to
04:59:06 2 Mr. Larry Bewley. Did the original get mailed or delivered
04:59:10 3 to Mr. Bewley?
04:59:11 4 A It was either mailed or faxed. And sometimes I
04:59:17 5 fax, and depending on the document, if I want them to have
04:59:20 6 a really clean copy of it, I'll follow up and mail it,
04:59:23 7 but --
04:59:24 8 Q But it was sent to them? In other words, I've
04:59:26 9 written letters that I've put in the drawer and never
04:59:29 10 mailed when I was angry or something.
04:59:30 11 A I've done some I should have.
04:59:32 12 Q Did you mail this Matheson 1?
04:59:35 13 A I got it to him, and so I got it through fax, Fed
04:59:38 14 Ex, mail, whatever. We didn't have e-mail in those days,
04:59:42 15 it hadn't been invented yet.
04:59:43 16 Q Okay. I'm going to hand you a second document
04:59:45 17 marked Matheson 2, and it's addressed to Joe Murray. Ask
04:59:49 18 you if you authored this document, Matheson 2?
05:00:06 19 A Appears so, yes, sir.
05:00:07 20 Q Okay. Is Matheson 2 a true and correct copy of
05:00:10 21 the document in your file? Again, understanding that the
05:00:13 22 document in your file is a copy as opposed to an original.
05:00:16 23 A The document in my file I no longer have, but,
05:00:19 24 yeah, Mr. Cremin or somebody has them. But, yes, that's
05:00:23 25 something I wrote or appears I wrote that. Doesn't look

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05:00:26 1 like it's been changed in any way.
05:00:27 2 Q You don't have any reason to doubt that this is a
05:00:29 3 true and correct copy of the original?
05:00:31 4 A No, sir.
05:00:31 5 Q All right. And was this document, Matheson 2,
05:00:34 6 sent to Joe Murray, whatever, by mail or fax or whatever?
05:00:37 7 A Yes. Yes.
05:00:38 8 Q Okay.
05:00:39 9 A Since it actually has a 401 Main address on it,
05:00:43 10 I'm guessing I mailed it.
05:00:44 11 Q Okay. Matheson 3, it appears to be a memo to
05:00:49 12 Mr. Murray from you. I'm going to ask you if you will take
05:00:52 13 a look at that and answer the same questions, ask you if
05:00:57 14 you authored this memo?
05:01:23 15 MR. CREMIN: I'm sorry, "Since they can't play
05:01:23 16 football worth a damn."
05:01:23 17 A Yes, sir.
05:01:23 18 Q (BY MR. MIKHAIL) And is this, Matheson 3, a true
05:01:25 19 and correct copy of the document that is in your files,
05:01:28 20 understanding that --
05:01:28 21 A It appears to be, yes, sir.
05:01:30 22 Q All right. And was this document sent to
05:01:32 23 Mr. Murray?
05:01:33 24 A By one method or another, yes, sir.
05:01:35 25 Q Okay. And I'm going to hand you what's been

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05:01:39 1 marked as Matheson 4 and ask you if you authored Matheson 4?
05:02:17 2 A That was a bad year, a long year. Filed a lot of
05:02:21 3 bills that year. Yes.
05:02:30 4 Q And is Matheson 4 a true and correct copy of the
05:02:34 5 document that is in your file?
05:02:35 6 A It appears to be, yes sir.
05:02:36 7 Q And was this document sent to Joe Murray?
05:02:38 8 A Yes, sir.
05:02:39 9 Q Two more. I'm going to hand you what's been
05:02:45 10 marked as Matheson 5 and ask you if you authored Matheson 5?
05:03:44 11 A Yes, sir.
05:03:44 12 Q All right. And is Matheson 5 a true and correct
05:03:48 13 copy of the document in your file, the original of the
05:03:50 14 document in your file?
05:03:52 15 A Appears to be, yes, sir.
05:03:52 16 Q Okay. Understanding the original is, perhaps,
05:03:54 17 not in your file. Was this sent to David Powers?
05:03:57 18 A Yes, sir.
05:03:58 19 Q Matheson 5?
05:03:58 20 A One method or another.
05:03:59 21 Q All right. The last one is marked Matheson 6.
05:04:02 22 I'm going to ask you if you'll take a look at it and tell
05:04:05 23 me if you authored Matheson 6?
05:04:08 24 MR. CREMIN: That's part of Matheson 5, did you
05:04:10 25 realize that? It's the same thing.

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05:04:12 1 MR. MIKHAIL: What?
05:04:13 2 MR. CREMIN: The last two pages of Matheson 5
05:04:16 3 just repeated.
05:04:17 4 THE WITNESS: Yeah, it looks like it is, yeah. I
05:04:18 5 read through --
05:04:21 6 MR. MIKHAIL: This is stapled to this.
05:04:23 7 MR. CREMIN: Somehow you copied that twice. It's
05:04:25 8 even the same computer generated numbers for us.
05:04:28 9 MR. MIKHAIL: That's fine. So we don't need
05:04:29 10 Matheson 6?
05:04:31 11 MR. CREMIN: No.
05:04:32 12 Q (BY MR. MIKHAIL) Okay. Well, Matheson 5 is two
05:04:36 13 documents together. Okay. That's fine. Let me ask you
05:04:38 14 then -- let's not worry about Matheson 6.
05:04:42 15 In Matheson 5 on the second page, it lists bills
05:04:49 16 which died and it has in parentheses peacefully or
05:04:54 17 otherwise; do you see that, Mr. Matheson?
05:04:56 18 A Yes, sir.
05:04:56 19 Q Tell me very briefly what you meant by peacefully
05:04:59 20 and tell me what otherwise meant.
05:05:02 21 A Generally, it's probably just a smart ass comment
05:05:07 22 from me. I have a tendency to be a bit irreverent and flip
05:05:14 23 in writing reports and things and it has no specific
05:05:19 24 meaning. Peacefully, I would suppose, is that it just died
05:05:23 25 a natural death by not being heard in committee and there

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<p>1 was no big fight over it or anything like that. If there 2 was a big battle on the floor in committee, it would be 3 otherwise, but more than likely, that's just -- as I'm 4 looking through here, most of these bills never made it -- 5 as best I can recall, never made it out of committee. I 6 remember this one specifically that didn't. 7 And a lot of things on here that sometimes don't 8 directly relate to tobacco but we follow, we track 9 legislation in any area which might affect them. We 10 probably follow 15 titles of law just for them that -- 11 where things may pop up, so some of these, I wouldn't of 12 had anything to do with along the way, perhaps, and -- but 13 they're on the list -- they were on the list of things we 14 were tracking and they did not pass. So we would -- we 15 would pass that information along. And then like I say, my 16 comment is my rather flippant attitude. 17 MR. MIKHAIL: Mr. Matheson, thank you very much. 18 THE WITNESS: Thank you. 19 MR. MIKHAIL: Gentlemen, thank you. 20 MR. STEWART: We've got some questions. 21 MR. MIKHAIL: You've got some questions? Oh, I'm 22 sorry. It may require some -- just follow-up questions if 23 you have something. 24 THE WITNESS: The lady here -- 25 MS. POTTER: Could we place a microphone on you,</p>	<p>05:08:03 1 whether tobacco use is hazardous to your health? 05:08:06 2 A No, sir. 05:08:06 3 Q Do you believe that you, as a lobbyist, should 05:08:09 4 provide to Oklahoma legislators information on the health 05:08:13 5 effects of tobacco use? 05:08:16 6 MR. MIKHAIL: Object as to leading. 05:08:17 7 A No. 05:08:18 8 MR. MIKHAIL: You can answer. 05:08:19 9 Q (BY MR. STEWART) Why not? 05:08:24 10 A There are a lot of sources for that. There are 05:08:26 11 competing forces out there, as we discussed earlier, the 05:08:30 12 cancer society, the lung association, some people from the 05:08:33 13 Oklahoma State Department of Health, research -- not a lot 05:08:37 14 but some research staff, they get a lot of things in the 05:08:41 15 mail just like the rest of us do. There are other sources 05:08:44 16 to find that information. 05:08:45 17 Q So an Oklahoma legislator has other sources other 05:08:49 18 than you to get information on health -- on tobacco use? 05:08:52 19 MR. MIKHAIL: Object as to leading. 05:08:54 20 A Yes, they do. 05:08:56 21 Q (BY MR. STEWART) In fact, one of the resources 05:08:59 22 you mentioned was the state Department of Health? 05:09:01 23 MR. MIKHAIL: Object, leading. 05:09:02 24 A Yes. 05:09:04 25 Q (BY MR. STEWART) Okay. And that's there in the</p>
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<p>1 please. 2 MR. CREMIN: You can probably hear me without 3 one, can't you? 4 MR. MacLAREN: How much do you have on the video 5 left? 6 MS. POTTER: Another hour. 7 CROSS EXAMINATION 8 BY MR. STEWART: 9 Q Mr. Matheson, have you ever told an Oklahoma 10 legislator that smoking is harmful? 11 A No. 12 Q Have you ever told an Oklahoma legislator that 13 smoking is not harmful? 14 A No. 15 Q So have you ever expressed your opinion on health 16 issues to Oklahoma legislators either way? 17 A Related to smoking? 18 Q Related to smoking. 19 A No, sir. 20 Q Are you a medical doctor? 21 A No. 22 Q Okay. Do you have any knowledge -- 23 A Started it in the 9th grade but I couldn't get 24 past geometry. 25 Q Do you have any knowledge personally as to</p>	<p>05:09:06 1 capitol building, in or near the capitol building in 05:09:08 2 Oklahoma City? 05:09:09 3 MR. MIKHAIL: Object, leading. 05:09:10 4 A They're near, they're about a mile away. 05:09:13 5 Q (BY MR. STEWART) Okay. So there are state 05:09:14 6 resources available to legislators to get this 05:09:16 7 information? 05:09:16 8 MR. MIKHAIL: Object, leading again. 05:09:17 9 A As far as I know, yes. 05:09:19 10 Q (BY MR. STEWART) Do you believe that Oklahoma 05:09:22 11 legislators recognize that a lobbyist is being paid by a 05:09:27 12 specific client? 05:09:28 13 A Generally, yeah. Of course, I mean, they -- you 05:09:32 14 go in and you tell them, I'm here for an R.J. Reynolds or 05:09:37 15 ABC Corporation today. 05:09:39 16 Q Have you ever talked to an Oklahoma legislator 05:09:41 17 without -- in your lobbyist capacity without telling them 05:09:44 18 who you represent? 05:09:47 19 A Only if they already knew it, if it was somebody 05:09:51 20 I knew well enough and they knew the issue I was talking 05:09:53 21 about and they knew who I represented, but I generally try 05:09:56 22 to make sure I tell them because as a contract lobbyist 05:10:00 23 with several clients, you have to say I'm wearing this hat 05:10:06 24 today, so, yeah. 05:10:08 25 Q And as a former legislator, did you understand --</p>

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05:10:10 1 did you have lobbyists contact you when you were a
05:10:13 2 legislator?
05:10:14 3 A Some, yes.
05:10:15 4 Q Okay. And when that happened, did you understand
05:10:17 5 that they were representing a certain interest or certain
05:10:20 6 group?
05:10:20 7 A Oh, yes. Yes.
05:10:22 8 Q Did you, as a legislator, turn to sources other
05:10:25 9 than lobbyists for information on a specific topic?
05:10:30 10 MR. MIKHAIL: Object, leading.
05:10:30 11 A Absolutely, because I mean, you know, again,
05:10:34 12 you're getting -- you're getting one side of a picture and
05:10:40 13 I might get it from the staff or from another group. And
05:10:43 14 the other thing is that, generally, if there is another
05:10:46 15 side on an issue, they're there letting you know very
05:10:51 16 quickly.
05:10:56 17 Q (BY MR. STEWART) Before today, had you ever
05:10:59 18 heard or seen the Frank Statement to smokers that
05:11:03 19 Mr. Mikhail mentioned to you earlier?
05:11:05 20 A I still haven't seen it. And, no, I haven't.
05:11:08 21 Q So before -- before 1987, were you aware of any
05:11:14 22 public statements by Reynolds as to their position on
05:11:18 23 smoking and health -- excuse me, on the health effects of
05:11:21 24 tobacco use?
05:11:23 25 A No.

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05:11:34 1 Q I believe Mr. -- sorry I do this to your name and
05:11:37 2 I shouldn't. Mr. Mikhail asked you some questions about
05:11:41 3 whether Reynolds had ever proposed or sponsored or helped
05:11:47 4 to sponsor a youth access law prior to 1994. Do you
05:11:51 5 remember that topic of questioning?
05:11:53 6 A Yes.
05:11:54 7 Q And I believe you had said it was your knowledge
05:11:57 8 there was just one instance before 1994 that you had worked
05:11:59 9 on behalf of Reynolds on a youth access to tobacco type of
05:12:05 10 law?
05:12:05 11 A Yeah, and I don't know that I said I worked on
05:12:08 12 behalf of Reynolds. It was a bill we saw that looked like
05:12:13 13 it was good legislation. I told them that I was working on
05:12:16 14 it and they didn't tell me to quit, but I don't know it was
05:12:20 15 a piece of legislation introduced by somebody not at my
05:12:24 16 behest or the company's behest, but it's something we
05:12:27 17 thought we could work on and it was a good piece of
05:12:29 18 legislation.
05:12:30 19 Q Prior to 1994, were there any laws in Oklahoma
05:12:34 20 that would have impacted youth access to tobacco?
05:12:37 21 MR. MIKHAIL: Object as to form.
05:12:38 22 A Yeah. I mean, I've been aware of the view for
05:12:44 23 years in the criminal statutes in Title 21, there's been a
05:12:47 24 provision in the law and it's been there a long time, I
05:12:50 25 don't know how long, that to sell tobacco to a minor is --

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05:12:57 1 can be a \$100 fine and up to 30 days in jail. And,
05:13:03 2 frankly, as I became more aware of that recently when they
05:13:06 3 were doing a redo of some of the ADAMHA stuff, they tried
05:13:11 4 to repeal that.
05:13:13 5 Q (BY MR. STEWART) As far as you're aware, was
05:13:14 6 that law on the books from 1987 through 1994?
05:13:18 7 A I couldn't really say how long it's been on the
05:13:20 8 books. I know it was there when I was in the legislature,
05:13:23 9 which is in the '70s, but I don't remember. I wouldn't
05:13:26 10 know.
05:13:26 11 Q But from your time period working for Reynolds,
05:13:28 12 from 1987 to 1996 --
05:13:32 13 A That's been on the books. Is that your question?
05:13:34 14 Q Yes.
05:13:36 15 MR. MIKHAIL: I object as to leading again.
05:13:38 16 Q (BY MR. STEWART) You also discussed with
05:13:43 17 Mr. Mikhail that you don't -- you couldn't recall any major
05:13:47 18 losses that you encountered as a lobbyist for Reynolds; is
05:13:52 19 that correct?
05:13:53 20 A Yes, sir.
05:13:54 21 Q Do you recall any major wins?
05:13:59 22 A I think what, and I'm trying to recall this
05:14:03 23 right, that I talked about that they're all nearly always a
05:14:08 24 series of compromises. When the final product is done and
05:14:19 25 your client hasn't been damaged, I suppose you call that a

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05:14:23 1 win, but it's a work product of a variety of people. So I
05:14:27 2 couldn't say I personally won or R.J. Reynolds personally
05:14:30 3 won, but it may be that, quote, the industry feels like
05:14:34 4 they won or that they came out a little better than they
05:14:38 5 would have in the beginning.
05:14:39 6 Q But even in those situations where you feel like
05:14:43 7 you did -- it was an adequate result for your client,
05:14:47 8 you're telling me that that was the result of compromise?
05:14:49 9 MR. MIKHAIL: I object as to leading again.
05:14:51 10 A Well, not just comprise because, also, when --
05:14:56 11 let's -- if there's a bill that's got tobacco companies
05:15:04 12 and the restaurant association and the retail merchants --
05:15:08 13 I mean, not retail merchants, I'm sorry, the oil marketers
05:15:13 14 involved in it, the lobbyists will take a list of how the
05:15:18 15 101 House members and break it up and each one talk to 10
05:15:22 16 or 12 or 15, whatever it takes. So I would have maybe only
05:15:26 17 talked to a fifth or a sixth of the members of the
05:15:28 18 legislature about the bill, so I mean, I wouldn't have --
05:15:32 19 it would be a work product of five or six people doing
05:15:36 20 that.
05:15:45 21 Q (BY MR. STEWART) As a lobbyist, do you have a
05:15:48 22 vote in the Oklahoma legislature?
05:15:50 23 A No. As a matter of fact, you can't even go on
05:15:53 24 the floor.
05:15:54 25 Q Is it correct to say that a lobbyist, any

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1 lobbyist, determines the outcome of a bill?
 2 MR. MIKHAIL: Object, leading.
 3 A What do you mean by determines the outcome?
 4 Q (BY MR. STEWART) If a lobbyist said, "This is
 5 the way the bill is going to be decided," is that
 6 guaranteed that that's the way a bill will be decided?
 7 A No. No, of course not. I mean, the only way
 8 that works is if the author decides that. Now, if the
 9 author agrees with the lobbyist, that might happen, but
 10 that author has to know -- has to know that somewhere along
 11 the way that he or she is going to be involved with some
 12 compromise on legislation. It's very rare somebody comes
 13 out and says, you know, this is holy writ from God and it
 14 has to be passed just like it is.
 15 Q Have you ever given false information to an
 16 Oklahoma legislator?
 17 A Not to my knowledge and never intentionally.
 18 Q Do you believe you've ever misled an Oklahoma
 19 legislator?
 20 A Personally, no.
 21 Q Do you believe Oklahoma legislators make up their
 22 own mind on how to vote?
 23 A Well, they make the decision based on the
 24 information or they make the decision based on political
 25 reasons, they make the decisions based on what the folks

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1 back home think, but they're the ones that eventually have
 2 to say, yes, I want to vote this way or that way.
 3 MR. MacLAREN: I've got about three questions.
 4 CROSS EXAMINATION
 5 BY MR. MacLAREN:
 6 Q Mr. Matheson, my name is Scott MacLaren. I'm
 7 here on behalf of the Tobacco Institute. I just have a few
 8 follow-up questions. Are you aware of any lobbyist on
 9 behalf of the tobacco industry that provided false or
 10 misleading information to any legislator?
 11 A No.
 12 Q Are you aware of any lobbyist on behalf of the
 13 tobacco industry that misled any legislator in any way?
 14 A No, sir, I'm not aware of any, no.
 15 Q Are you aware of any legislator who has not voted
 16 his own conscience on any particular piece of legislation?
 17 A You know, I don't know what's in their
 18 conscience. I know the process by which legislators go
 19 through to make votes and I could tell you maybe something
 20 that I have done in the past, I'm not going to, but I don't
 21 know --
 22 MR. MIKHAIL: He's on your side.
 23 THE WITNESS: I'm still not going to tell him.
 24 Q (BY MR. MacLAREN) Can a lobbyist like yourself
 25 introduce legislation on the floor of the House or the

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05:18:39 1 Senate?
 05:18:39 2 A No. You can request someone, but that's it.
 05:18:42 3 MR. MacLAREN: That's all I have. Thank you.
 05:18:45 4 MR. MIKHAIL: Pat, do you have any questions?
 05:18:48 5 MR. CREMIN: I'm not going to ask any questions.
 05:18:50 6 MR. MIKHAIL: You asked for the microphone.
 05:18:52 7 MR. CREMIN: It's because I like that feel. I'm
 05:18:55 8 hoping I'll be asked a question by some famous reporter.
 05:18:59 9 MR. MIKHAIL: Are you going to ask questions?
 05:19:01 10 MR. CREMIN: No.
 05:19:02 11 MR. MIKHAIL: Okay. And I have couple of
 05:19:03 12 follow-ups.
 05:19:04 13 REDIRECT EXAMINATION
 05:19:04 14 BY MR. MIKHAIL:
 05:19:04 15 Q Isn't it true, Mr. Matheson, we were talking
 05:19:06 16 about -- Mr. Stewart was talking about legislators voting
 05:19:11 17 on legislation. Isn't it true that the vast majority of
 05:19:16 18 the bills that are reflected on Exhibits 1 through 5, as
 05:19:24 19 well as the legislation that we talked about in our
 05:19:28 20 deposition today, the members of the legislature in
 05:19:32 21 Oklahoma didn't get a chance to vote on them; isn't that
 05:19:35 22 true?
 05:19:36 23 A You said the majority, and I don't know. I'd
 05:19:42 24 have to look at --
 05:19:43 25 Q Let's take a look at them.

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05:19:45 1 A Well, I mean, I -- even looking at them, I may
 05:19:47 2 not know, but many, many bills die in committee, if that's
 05:19:53 3 your point.
 05:19:56 4 Q Well, from your experience in dealing with
 05:20:00 5 legislation in Oklahoma that was of interest to your
 05:20:04 6 client, whether they were R.J. Reynolds or TI, when you
 05:20:10 7 worked at TI, isn't it true that the vast majority of that
 05:20:14 8 legislation that died that R.J. Reynolds was opposed to or
 05:20:20 9 TI was opposed to was not voted on by the legislature,
 05:20:25 10 either the House or the Senate?
 05:20:27 11 MR. STEWART: Objection, form.
 05:20:28 12 A It may have -- well, some legislators in
 05:20:33 13 committees voted on it. Now, the average year there's
 05:20:41 14 maybe 13 to 1,500 bills introduced. About 300 of those
 05:20:47 15 become law, so maybe a fifth or so. So some of them die in
 05:20:50 16 committee, some die on the floor, some die in conference
 05:20:53 17 committees. So it would be difficult, unless you went back
 05:20:56 18 and looked at the record of every bill to see if whatever,
 05:20:59 19 you know, Senate Bill 2 on there ever came out of committee
 05:21:06 20 or not and was heard. You can find those things, but it's
 05:21:07 21 difficult to say if every one of them or a majority. But I
 05:21:11 22 would, you know -- more bills stay in committee naturally
 05:21:19 23 than come out of committee, so I would venture to say that
 05:21:22 24 more of those bills stayed in committee than came out.
 05:21:25 25 Q (BY MR. MIKHAIL) All right. Well, let's look at

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<p>05:21:26 1 Exhibit 4. Of the ones listed on Exhibit 4, if you'll</p> <p>05:21:32 2 examine that exhibit, could you tell me which of the bills</p> <p>05:21:35 3 on Exhibit 4 were, from what is indicated on the document</p> <p>05:21:39 4 and from your recollection, were voted on by either the</p> <p>05:21:43 5 full House or the full Senate?</p> <p>05:21:47 6 A As I recall, the Senate Bill 626 was passed by</p> <p>05:21:53 7 the Senate.</p> <p>05:21:54 8 Q Okay.</p> <p>05:21:54 9 A And I believe died in House committee. That's</p> <p>05:21:59 10 just trying to recall that. 809, it says essentially the</p> <p>05:22:06 11 same as above bill. I don't remember that bill number at</p> <p>05:22:09 12 all unless -- well, I can't be -- I can speculate, but I</p> <p>05:22:16 13 don't know.</p> <p>05:22:17 14 1040 went to the governor's desk. The ADAMHA</p> <p>05:22:22 15 bill passed. SJR 10, "Requiring the State Education</p> <p>05:22:30 16 Employees Group Insurance Board to study health costs</p> <p>05:22:35 17 associated with use of tobacco products, alcohol and</p> <p>05:22:38 18 illegal drugs." It says it's dead, so this would have been</p> <p>05:22:42 19 at the end of a two year session because it's in 1990 --</p> <p>05:22:45 20 no, it would have been at the beginning of the two year</p> <p>05:22:47 21 session. '94 -- no, be the end of a two year session.</p> <p>05:22:53 22 So -- and I don't specifically recall. I mean, I have a</p> <p>05:22:58 23 vague recollection of it, but I don't recall. I never did</p> <p>05:23:00 24 do any work on it as far as I can remember.</p> <p>05:23:13 25 41, "Constitutional amendment increasing taxes on</p>	<p>05:24:12 1 were about or anything, just if you know.</p> <p>05:24:15 2 Q (BY MR. MIKHAIL) If you can just tell me -- just</p> <p>05:24:15 3 glance at them, you don't have to read them out loud.</p> <p>05:24:18 4 A Some were, some weren't.</p> <p>05:24:20 5 Q (BY MR. MIKHAIL) Can you tell me which ones were</p> <p>05:24:22 6 voted on by the full House and full Senate -- or full</p> <p>05:24:26 7 Senate, sorry?</p> <p>05:24:29 8 A 1015, House Bill 1015 was at one time. It passed</p> <p>05:24:35 9 through and then it passed the House and was hung up in the</p> <p>05:24:39 10 Senate, and portions of it were taken and put into the</p> <p>05:24:42 11 ADAMHA bill and passed, which was a vote by both houses of</p> <p>05:24:46 12 the legislature.</p> <p>05:24:48 13 1303, posting signs on alcoholic beverages where</p> <p>05:24:52 14 sold and cigarettes are sold, vending machines; never got</p> <p>05:24:55 15 out of committee, as I recall.</p> <p>05:25:01 16 1562, I don't remember anything about.</p> <p>05:25:05 17 The one on vending machines, I don't remember</p> <p>05:25:06 18 anything about.</p> <p>05:25:15 19 1865 was a system of revocation permits to retail</p> <p>05:25:22 20 dealers in 3.2 beer. I don't recall -- looks like</p> <p>05:25:30 21 something probably didn't get out of committee; but I don't</p> <p>05:25:32 22 really know.</p> <p>05:25:34 23 2010 probably didn't get out of committee.</p> <p>05:25:45 24 This says that House Bill 2129 authorizing</p> <p>05:25:48 25 restaurants to have smoking or nonsmoking or be totally</p>
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<p>05:23:13 1 insurance" --</p> <p>05:23:13 2 THE COURT REPORTER: I'm sorry, I cannot</p> <p>05:23:14 3 understand what you're saying.</p> <p>05:23:16 4 THE WITNESS: I'm sorry, I was mumbling.</p> <p>05:23:18 5 MR. CREMIN: Just read it to yourself and then</p> <p>05:23:19 6 she doesn't have to write all of that.</p> <p>05:23:22 7 THE WITNESS: Say what?</p> <p>05:23:24 8 MR. CREMIN: Read it to yourself, don't read it</p> <p>05:23:25 9 out loud and then she doesn't have to transcribe every</p> <p>05:23:25 10 word.</p> <p>05:23:25 11 THE WITNESS: Senate Bill Resolution 41 which</p> <p>05:23:28 12 related -- it was a constitutional amendment on insurance</p> <p>05:23:31 13 and tobacco products, alcohol and beverages; dead. I don't</p> <p>05:23:35 14 recall doing any work on that. It was one of those sort of</p> <p>05:23:41 15 like off-the-wall proposal. It wasn't done by --</p> <p>05:23:44 16 leadership bills like that just don't make it, generally.</p> <p>05:23:52 17 The --</p> <p>05:23:53 18 MR. CREMIN: You're absolutely right. If I</p> <p>05:23:55 19 might, the question was can you tell by looking at that</p> <p>05:23:59 20 which ones actually were voted on by the full legislature</p> <p>05:24:02 21 versus which ones died in some form of committee. That's</p> <p>05:24:06 22 all.</p> <p>05:24:06 23 MR. MIKHAIL: Without being voted on by the full</p> <p>05:24:08 24 House or the Senate.</p> <p>05:24:10 25 MR. CREMIN: You don't have to define what they</p>	<p>05:25:51 1 smoking or nonsmoking died, which is correct. Those</p> <p>05:25:55 2 provisions were put into another bill and did pass and</p> <p>05:25:58 3 that's the law in Oklahoma today.</p> <p>05:26:03 4 2130, I don't remember.</p> <p>05:26:15 5 2208, I don't remember. I think it died in</p> <p>05:26:17 6 committee.</p> <p>05:26:18 7 2222 could have died. I think died in</p> <p>05:26:22 8 committee.</p> <p>05:26:26 9 House Bill 2617 passed the House. It's to</p> <p>05:26:31 10 require child abuse reports to include nicotine among the</p> <p>05:26:34 11 harmful substances to which infants are born addicted to or</p> <p>05:26:42 12 exposed to and requirements to be kept --</p> <p>05:26:43 13 THE COURT REPORTER: I can't understand what</p> <p>05:26:44 14 you're saying.</p> <p>05:26:45 15 MR. CREMIN: Don't read them.</p> <p>05:26:47 16 THE WITNESS: How the hell is anybody supposed to</p> <p>05:26:49 17 know what I'm talking about?</p> <p>05:26:51 18 Q (BY MR. MIKHAIL) Just answer by the number.</p> <p>05:26:52 19 A 2617, bill passed, was voted on by committee and</p> <p>05:26:57 20 the full House and then was amended in Senate committee and</p> <p>05:27:05 21 died on the Senate floor, I believe.</p> <p>05:27:08 22 House Bill 2795 was amended and voted on by the</p> <p>05:27:13 23 entire House. That's about it.</p> <p>05:27:16 24 Q Okay. I'm going to hand you Exhibit 5 and ask</p> <p>05:27:19 25 you to do the same thing, but try, if you would, not to</p>

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1 read out what each one says, just identify because it's
2 already an exhibit to the deposition.

3 A Okay.

4 Q And all I want you to do is designate the ones
5 that were actually voted by either the full House or
6 Senate. You don't have to mention the ones that were not.

7 A On the first page of this, which is two different
8 exhibits or two different sets of things, there are no bill
9 numbers listed. It just says --

10 Q I understand, just go to the next page.

11 A House Bill 2494 passed, voted on by both Houses
12 and passed.

13 House Bill 2493 was withdrawn by the author.

14 House Bill 1007, I don't remember.

15 House Bill 1200 died by vote in committee.

16 House Bill 1639, I believe passed the House and
17 died in the Senate judiciary committee.

18 House Bill 2161, I don't remember. I don't think
19 it got to the floor.

20 House Bill 2640, which didn't have anything to do
21 with, apparently -- I don't know, I didn't do anything on
22 it, so I don't know.

23 House Bill 2591, I believe passed the House, died
24 in the Senate.

25 House Bill 3015 relates to product liability and

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1 I didn't have anything to do with that.

2 House Bill 3018, two year limitation of product
3 liability, I didn't do any work on that, so I don't know.

4 Senate Bill 95 did not come out of committee in
5 the Senate at the author's request.

6 Senate Bill 309, I believe passed the Senate and
7 died in the House, either in committee or on the floor.

8 Senate Bill 367, I just don't recall the number,
9 what it did.

10 Senate Bill 387 came out of Senate committee and
11 was killed pretty severely on the Senate floor on
12 preventing sale of butane lighters.

13 635 relating to deceptive trade practices act,
14 that's not anything I worked on. It says it died, but I
15 don't know how.

16 House Bill 2938 did pass and was voted on by both
17 houses.

18 House Bill 2494 passed, was voted on by both
19 houses.

20 Q Okay. Mr. Matheson, in your work as a lobbyist
21 for R.J. Reynolds, isn't it true that one of your first
22 objectives in defeating a proposed bill is to try to get it
23 assigned to a committee that you would believe would be
24 more favorable to defeat or kill the bill in that committee
25 rather than it going forward to the floor?

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09:30:55 1 A Well, I think that what we've tried to do over
09:31:03 2 the last few years is to have a system where bills that are
09:31:13 3 related to certain subject matters go to certain committees
09:31:17 4 where they always have gone. For instance, in the House,
09:31:21 5 tobacco legislation has historically over the last 10 years
09:31:26 6 or so has gone to the commerce, industry and labor
09:31:29 7 committee. And Senate usually is general government,
09:31:37 8 but --

09:31:37 9 Q Are you saying that you attempt for R.J. Reynolds
09:31:41 10 as a lobbyist to see that bills introduced that R.J.
09:31:44 11 Reynolds is against and wants defeated, to see to it that
09:31:48 12 it is assigned to the committee that it traditionally goes
09:31:51 13 to; is that what you're telling me?

09:31:53 14 MR. STEWART: Objection, form.

09:31:54 15 A Yes, sir.

09:31:55 16 Q (BY MR. MIKHAIL) It is not to get it to a
09:31:57 17 committee that it would be -- it would have more of a
09:32:01 18 chance of being defeated in committee?

09:32:03 19 A I would not work to put it in a committee where
09:32:06 20 it would have a chance to be passed.

09:32:07 21 Q Okay. And isn't it true that the next step, that
09:32:11 22 if it goes to a committee, whether it's a favorable
09:32:15 23 committee or an unfavorable committee, either way, and you
09:32:18 24 want, meaning R.J. Reynolds, wants the legislation or the
09:32:24 25 proposed bill defeated, that it wants to -- and you, on

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09:32:27 1 behalf of R.J. Reynolds, try to get it defeated in
09:32:29 2 committee as opposed to going forward?

09:32:31 3 MR. CREMIN: I'm going to object to form of the
09:32:33 4 question only because you did about three stops and I'm
09:32:36 5 just not sure, but go ahead and answer.

09:32:37 6 Q (BY MR. MIKHAIL) Once it gets to a committee,
09:32:40 7 whether it's a favorable or an unfavorably committee in
09:32:40 8 your client's perspective and in your perspective?

09:32:40 9 A We start working on counting the votes in that
09:32:44 10 committee and talking to the members to try to defeat that
09:32:47 11 bill in committee, yes.

09:32:48 12 Q Okay. Isn't it true that one of the ways, one of
09:32:50 13 the effective ways of doing that is to make sure that you
09:32:56 14 influence the chair of the committee?

09:32:58 15 A That's the method some people use.

09:33:00 16 Q Do you use it?

09:33:02 17 A Rarely, if ever.

09:33:03 18 Q Well, the definition of a lobbyist that I pulled
09:33:08 19 out of Webster's says that you try to influence the outcome
09:33:12 20 of legislation. And I'm asking you, did you attempt for
09:33:15 21 RJR as a lobbyist to influence what happens to a bill in
09:33:19 22 committee by contacting or talking to the chair of the
09:33:22 23 committee?

09:33:25 24 A I'm trying to think, because that's not normally
09:33:29 25 something I do because I don't -- I don't believe in the

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05:33:33 1 process working that way, but I am sure that at least once
05:33:39 2 in the past I have talked to a committee chairman about
05:33:43 3 that, but my general approach is usually that, you know, it
05:33:48 4 would be nice if you didn't want to hear it, but if you're
05:33:51 5 going to, I understand that, I'd just like to know so I can
05:33:53 6 work with the committee members if I need to.
05:33:55 7 Q All right. Isn't it a fact, Mr. Matheson, that
05:33:58 8 in many bills that are in committee, that the actual will
05:34:04 9 of the legislature is really exhibited or reflected by what
05:34:10 10 a handful of committee members do and not the full House or
05:34:15 11 full Senate; isn't that true?
05:34:17 12 A It is -- that is true in almost every committee
05:34:20 13 on almost any area of legislation you want to talk about.
05:34:24 14 Q I understand. So when you set out to defeat
05:34:26 15 legislation that you -- that R.J. Reynolds opposed and
05:34:30 16 wanted defeated, it was really a matter of trying to get a
05:34:33 17 handful of legislators in committee decide with you and not
05:34:37 18 the entire House or entire Senate; isn't that correct?
05:34:39 19 MR. CREMIN: Object to the form.
05:34:40 20 Q (BY MR. MIKHAIL) While it was in committee?
05:34:42 21 MR. STEWART: Same objection.
05:34:43 22 A That's the way the entire -- that's what's called
05:34:46 23 the committee process.
05:34:48 24 Q (BY MR. MIKHAIL) I understand.
05:34:48 25 A And that's how it works.

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05:34:50 1 Q I understand.
05:34:52 2 A And if you -- if there are 18 members of
05:34:54 3 committee and you can get 10 committed to either side, you
05:34:57 4 know, you're going to be successful in keeping that bill
05:35:01 5 out of committee.
05:35:01 6 Q So it wouldn't be -- I'm sorry. Go ahead.
05:35:03 7 A That's it.
05:35:04 8 Q It wouldn't be in R.J. Reynolds' interest to have
05:35:07 9 it go to the full floor of the House or the Senate if it
05:35:11 10 was opposed to the legislation?
05:35:13 11 A Well, I don't know whether it's in R.J. Reynolds'
05:35:15 12 interest or not. It's not in mine because I have to work a
05:35:18 13 hell of a lot harder if it gets to the full House, I got to
05:35:24 14 go to 101 members instead of maybe 15.
05:35:26 15 MR. MIKHAIL: That's all I have.
05:35:29 16 MR. CREMIN: I don't have anything else. You
05:35:31 17 want to borrow this again because you don't have my dulcet
05:35:36 18 tones.
05:35:36 19 MR. MIKHAIL: Just for the record, I'm going to
05:35:38 20 object to you having follow-up, but it may be permitted, I
05:35:41 21 don't know.
05:35:42 22 MR. STEWART: As opposed to you having follow-up?
05:35:46 23 MR. MIKHAIL: Well, it's my deposition. If
05:35:48 24 you're permitted, go ahead. I can't stop you. I'm just
05:35:52 25 objecting to preserve my objections. You're really good at

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05:35:52 1 that, preserving the record. Go ahead.
05:35:55 2 **RE CROSS EXAMINATION**
05:35:55 3 BY MR. STEWART:
05:35:55 4 Q Mr. Matheson, the committee structure in the
05:36:00 5 Oklahoma legislature, is that set up by the Oklahoma
05:36:04 6 constitution?
05:36:05 7 A No.
05:36:05 8 Q How is it set up? I mean, what provides for that
05:36:08 9 structure?
05:36:09 10 A It's a rather archaic and arcane system, but the
05:36:19 11 Speaker of the House appoints all chairs, all co-chairs,
05:36:23 12 all members of all committees.
05:36:26 13 Q Was that system set up before you became a
05:36:28 14 lobbyist for Reynolds?
05:36:30 15 A Oh, yeah.
05:36:32 16 Q And I asked you some questions earlier about the
05:36:35 17 representations that you make to Oklahoma legislators,
05:36:40 18 correct; do you remember those?
05:36:40 19 A Uh-huh.
05:36:42 20 Q Are committees in the Oklahoma legislature made
05:36:44 21 up of individual Oklahoma legislators?
05:36:47 22 A Sure.
05:36:48 23 Q Okay. So my questions I asked you about your
05:36:50 24 representations to Oklahoma legislators, does that apply --
05:36:54 25 would your answers be the same if we're talking about a

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05:36:57 1 specific committee member?
05:36:58 2 A Sure. I mean, they're still legislators and the
05:37:01 3 same rules still apply.
05:37:02 4 Q And committee members still make up their own
05:37:05 5 minds?
05:37:06 6 MR. MIKHAIL: Object, leading.
05:37:07 7 A I sure hope they do.
05:37:08 8 MR. STEWART: I just have one other thing. I'd
05:37:11 9 like to ask that the entire transcript be put under seal
05:37:14 10 pursuant to paragraph seven of the June 1st, 1998
05:37:19 11 confidentiality order regarding lobbying activities.
05:37:22 12 Actually, it was signed by the judge on June 1st, and it
05:37:26 13 was filed June 1st, too. It was agreed as to form by
05:37:29 14 plaintiffs and defendants and provides that any
05:37:33 15 confidential information that is gleaned from confidential
05:37:36 16 documents marked highly confidential that is discussed in a
05:37:40 17 deposition can be -- the deposition needs to be placed in a
05:37:46 18 sealed envelope marked with the caption of a case and held
05:37:50 19 under seal in accordance with the local rules and practices
05:37:53 20 of this Court for such pleadings and documents. Exhibits 1
05:37:56 21 through 6 were marked -- Exhibits 1 through 5 were marked
05:37:59 22 confidential and I believe some of the documents that
05:38:01 23 Mr. Mikhail discussed with Mr. Matheson that were not
05:38:04 24 marked as exhibits were also marked confidential.
05:38:08 25 MR. MIKHAIL: Kelly, just for clarification

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1 purposes, I may let David and Jerry address this, but are
2 you -- they're more familiar with the order of
3 confidentiality. Are you permitted or any party under the
4 order permitted to make a blanket designation of the entire
5 deposition as sealed?

6 MR. STEWART: I don't believe I even have to make
7 a designation. I think that this order says that where any
8 confidential information is discussed in a deposition, it
9 shall be marked in words and substance and state
10 confidential protective order and the language I entered
11 in. So I don't think I necessarily have to do this, but I
12 am making sure on the record that I believe the entire
13 transcript, because I don't know how we can parcel out what
14 was confidential versus what wasn't. So at this point, I'd
15 like to ask that the entire transcript be placed under
16 seal, and we can try to come up with an agreement if you
17 disagree with me or whatever, but I'd just like it be that
18 way at this point.

19 MR. MIKHAIL: I understand. I'm going to let
20 them address it, if at all. There may not be anything they
21 want to say.

22 MR. EVANS: I will address it. I need just a
23 moment.

24 MR. MIKHAIL: I think we're done.

25 MS. POTTER: This is the end of tape two. Off

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1 the record at 05:40:29.
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CERTIFICATE

1
2 STATE OF OKLAHOMA)
3 COUNTY OF OKLAHOMA) SS

4 I, DEANN BROWN, Certified Shorthand Reporter
5 within and for the State of Oklahoma, do hereby certify
6 that the above-named Mandell Matheson was by me first duly
7 sworn to testify the truth, the whole truth, and nothing
8 but the truth, in the case aforesaid; that the above and
9 foregoing deposition was by me taken in shorthand and
10 thereafter transcribed; that the same was taken the 6th day
11 of October, 1998, in the City of Tulsa, County of Tulsa,
12 State of Oklahoma, pursuant to notice and subpoena, and
13 under the stipulations hereinbefore set out; and that I am
14 not an attorney for nor relative of any of said parties or
15 otherwise interested in the event of said action.

16 IN WITNESS WHEREOF, I have hereunto set my hand
17 and official seal this 14th day of October, 1998.
18

19
20 DEANN BROWN, CSR, RPR, CRR
State of Oklahoma, No. 921

21
22 DeAnn Brown
Oklahoma Certified Shorthand Reporter
23 Certificate No. 00921
24 Exp. Date: December 31, 1999
25